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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

O God, You have prophesied through Isaiah, ''You will keep him in perfect peace whose mind is stayed on You''—Isaiah 26:3; and promised through Jesus, ''Peace I give to you, not as the world gives do I give to you. Let not your heart be troubled, neither let it be afraid.''—John 14:27.

That is the quality of peace we need to do our work creatively today. Often the conflict and tension present in our lives threaten to rob us of a calm and restful mind and heart. It is so easy to catch the emotional virus of frustration and exasperation. Help us to remember that Your peace is a healing antidote to anxiety that can survive in any circumstance.

Provider of peace, give us the peace of a cleansed heart, a free and forgiving heart, a caring and compassionate heart. Right now, may Your deep peace flow into us, calming our impatience and flowing from us to others.

Especially, we pray for Your peace for the women and men of this Senate. May Your profound inner peace free them to think clearly and speak decisively while maintaining the bond of peace with one another. Through our Lord and Saviour. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT of Mississippi, is recognized.

Mr. LOTT. Thank you very much, Mr. President.

THE CHAPLAIN'S PRAYER

Mr. LOTT. Mr. President, it is worth coming to the opening moments of the Senate session each day just to hear the Chaplain's prayers. I wish to express, again, my sincere appreciation for the beauty and for the meaningfulness of those prayers. It gives us the right frame of mind to begin a day's work together for the American people.

SCHEDULE

Mr. LOTT. Mr. President, the Senate will immediately resume consideration of amendment No. 1077, offered by the Senator from Indiana, Senator COATS, who is here and prepared to go. This is an amendment, of course, to S. 1061, the Labor, HHS appropriations bill. It is hoped that an agreement can be reached this morning to conduct a vote on the Coats amendment by mid-morning, hopefully within the hour.

In addition, Members can anticipate additional votes on amendments currently pending to the Labor, HHS appropriations bill and other amendments expected to be offered to the bill throughout the day's session. I understand a couple of amendments have been offered and set aside. I know there are some other amendments pending. As always, Members will be notified of exactly what time the votes will be scheduled. We will work with all Members to make sure they have an opportunity to offer their amendments and debate them, and then, of course, we will have votes, if necessary.

I ask, again, that all Senators cooperate with our managers on both sides of the aisle. They are trying to move this very important legislation that means so much to our country. And, as is quite often the case when we return from a period back in our respective States, we have not gotten off to a fast start. We hope to complete this very important appropriations bill today. We do have some problems and some delays. I would like to address those just for a moment.

First, with regard to tomorrow, it is still my intent to have a cloture vote in the morning. We have not set a time. It could be as early as 8:30 to accommodate Senators' schedules, on the cloture motion on the Food and Drug Administration reform bill. We need to get this bill done. It was reported out overwhelmingly from the committee, and it has broad bipartisan support. Unfortunately, this is even a cloture vote on the motion to proceed.

The Senator from Massachusetts, Senator KENNEDY, has objections to this FDA reform. I thought we had them worked out two or three times at the end of the session, before the August recess, and then it seemed to get away from us.

I hope we can get all the Senators to work together and work out agreements so we can move this very important legislation. It is very important to the health and general quality of life of all Americans. This is an agency that has been bureaucratic, it has been slow, it has not done its work where it should be doing its work, and it has tried to force itself into areas where it really doesn't belong. This is long overdue.

I, again, am interested in getting it done. But if we have to, we will have more than one vote or votes on cloture. We need to go ahead and complete this. I think, once we can get it to debate and vote, it will not take very long. If we can work out something, by the way, on the bill, before the time, then we would not have to have a cloture vote tomorrow. I would be glad to work with the leaders on the legislation, Democratic leaders, to decide on a time when it would be debated and when that would be scheduled, either later on this week, or Monday or Tuesday. We will work together on that.

CONTESTED LOUISIANA ELECTION

Mr. LOTT. Mr. President, the other issue I want to address is some of the problems we have today. When we have something brought to the Senate that

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

we have to look into, and, in this case, I am referring to the election in Louisiana for the Senate last year, where allegations of fraud have been made, it is incumbent upon us to thoroughly check those allegations out. Unfortunately, the committee charged with jurisdiction in this area has not been able to work together in a bipartisan way to get it done and get the work completed. I want us to reach that point sooner, not later, and I have worked across the aisle to try to come up with a process to make that happen. I thought we had it worked out, again, the last week in July, and at the last minute that fell apart.

So, we have to do our job. I am not going to come to the floor of the Senate, look Senators in the eye, and the American people, and say, ''We checked it out thoroughly, there is nothing here,'' or, ''There is a real problem here,'' until all the work that needs to be done has been done. I can't do that.

Now we are being told, well, if you continue it, we are going to have delays and obstruction by the Democrats. What are they delaying and obstructing? The Labor, Health and Human Services appropriations bill, the Superfund reform. Here is a program, Superfund, that is really the laughingstock of America. You care about the environment? Who among us would not care that the program is not working. Lawyers have a grand time. They are making money. But we are not cleaning up hazardous sites. We are not cleaning up hazardous waste sites.

So the Committee on Environment and Public Works wants to meet today to mark up the Superfund bill, and I am being told, ''Well, we are not going to let you meet; we are not going to let that committee meet, in a bipartisan way, and mark this bill up.'' And, therefore, I have no option but to say, OK, if you are going to do that, then we will go out this afternoon.

If objection is made to the Environment and Public Works Committee meeting this afternoon to mark up Superfund reform, which would clean up hazardous waste sites in my State and probably every State in America, if that is going to be blocked, then the Senate will go out at 2 o'clock, we will be out until 4 o'clock so the committee can meet and do its work, and we will tack that time onto tonight. We are not going to have this arrangement where the other side tries to dictate the schedule in committee meetings. We are not going to do that.

I have worked very hard to keep my word to the Senate and to the Senators. When I say we are going to meet and have votes, we try to do that. When we agree we are not going to meet and have votes, we try to honor that. We agreed we would be out in the third week in October for the Columbus Day period. I am going to keep my word on that. I tried to keep in mind the personal lives, and opportunities to have dinner with families and children. I want to do that. But if we are going to start playing this game of threats and delays and obstruction and blocking of committee meetings and that sort of thing, then I have no option but to put the time on the back end.

So, I don't think that is necessary. We have had a good feeling here in the Senate for the last 2 months. We worked together in a bipartisan way, even when we disagreed. I think we can continue to do that, and I certainly will try to continue to keep my word and work with the Senators on this schedule. That is one of the reasons why we might have to vote early in the morning, because some Senators on both sides of the aisle want to leave. That is fine. We want to help them. But we also have work to do.

So, I just wanted to point out what is going on. I don't have any problem with doing it this way. I just want everybody to understand I am not doing it to cause confusion or delay. I have no option.

The Environment and Public Works Committee will meet today. We will continue to work on the Labor, HHS appropriations bill. I believe that we can and should get it completed today or tomorrow. But we will have success on this bill, and we will do it in a bipartisan way, and we will do it, hopefully, by the end of this week or the first of next week.

So I just wanted to advise Senators what the schedule looks like for today and in the morning. I will talk to my counterpart on the other side of the aisle. I will be glad to work with Senators on FDA reform and Superfund reform and on Labor, HHS, to see if we can find reasonable accommodation, and we will also continue to pursue an opportunity to recommend to the Senate what action, if any, or none, should be taken with regard to the Louisiana election.

Mr. DORGAN. Will the Senator yield for a question?

Mr. LOTT. I'd be glad to yield.

Mr. DORGAN. I listened with interest to the Senator from Mississippi, the majority leader. I think it is important to point out that there is no intention that I am aware of on this floor to interrupt the business of appropriations bills. The principal business in this month of September is to finish, and work hard on, the appropriations bills; by the end of September, have them down to the White House, so the President can sign them and avoid a continuing resolution. So we want to do that, and there is no objection that I am aware of, made by anyone, which would interrupt in any way the conduct of business on appropriations bills.

The Senator from Mississippi, the majority leader, knows there is great concern about the issue of a contested election in Louisiana, by which a Member of the Senate was seated without prejudice and an investigation was begun. The conduct of that investigation causes some significant concern here in the Senate. It is not December, it is not January, February, March, or April; it is September, and we have a Member of the Senate who is still seated in this Senate, seeing activities of a committee on an investigation in which allegations of fraud were made. And I might say that the committee hired a couple of investigators, lawyers—a Republican and a Democrat—and the first report they gave to the committee was to say there is nothing there. But that was not enough.

I am not going to go into what is going on in the committee. I don't think we need to have that discussion. But, you know, it is September. It's September, and we have a Member of the U.S. Senate who is still held in limbo, here, on this issue of investigation. I saw yesterday newspaper after newspaper after newspaper in Louisiana, the editorials and stories say, ''There is nothing here. Let this go. Stop this investigation.''

So, you know, the concern that some exhibit on the floor of the Senate about this issue is not without foundation. The Senator from Mississippi points out that he is concerned about delay. I don't think any of us want a delay.

Mr. LOTT. Mr. President, if I could reclaim my time to respond on that, I think everybody has indicated we want to continue to move the appropriations bills.

Mr. DORGAN. That's correct.

Mr. LOTT. But if an objection is heard today for the Environment and Public Works Committee to meet in session this afternoon and work on marking up a very important environmental bill to clean up hazardous waste sites, that interrupts the process of the appropriations bill. That committee should meet. In my opinion, it should have already met on this issue, and had votes and brought it to a conclusion. So, if an objection is heard to committees meeting, I have no option but to go out for a period of time to allow the committees to do their work. That's a very important part of our process here.

So the effect is that you are delaying the appropriations bill. But perhaps objection would not be heard, we wouldn't have to stop for 2 hours this afternoon so that a very important committee could meet. I have indicated to the Senator and to Senator DASCHLE that we hope that would not be necessary. But, you know, the effect is to delay the Labor, Health and Human Services appropriations bill.

With regard to the Louisiana election, yes, it is September. It need not be. This matter could have been concluded, completed, weeks or months ago, but from the beginning, the Democrats on the committee would not cooperate, would not work with us. They didn't actually——

Mr. DORGAN. Well——

Mr. LOTT. Wait, I have the floor and I will yield when you ask me to. I am on that committee, and all I ever said was find out what happened, was there

apparent fraud or not. As a matter of fact, investigators never went into Louisiana until July. Shortly thereafter, in something I have not seen in 25 years in Congress, the Democrats walked out of the committee's proceedings and said, ''We won't participate.''

In investigation after investigation over the years in the House and the Senate, I never saw the Republicans or Democrats, in any other instance, say, ''We're not going to participate.''

What happened after the investigators' being down there for like 2 weeks, the Justice Department withdrew the FBI agents. It couldn't come to a conclusion. The week before we went out, I talked with Senators on the Democratic side of the aisle, and we worked out an arrangement that I thought everybody was satisfied with for a special allocation of money to complete that work and in time to complete that work. At the last minute, it was jerked away.

What has happened is, I think Senator WARNER is going to make an announcement today, I believe, about a schedule he has in mind. There are several boxes of documents that have been turned over now to the committee as a result of the subpoena duces tecum to get evidence with regard to gaming interests and involvement in the election. By the way, I think they have every right to support a referendum. The only question is was it in any way used improperly or illegally. I don't know the answer to that.

Once those documents are reviewed, I understand the committee is going to meet, hear from the investigators, hear what the evidence is, if any, that they find in these documents and, at some point, the committee will proceed to action. I don't know exactly what date that would be.

It is not my intention to drag this out indefinitely. But I have to be able to come here and say to Members on both sides of the aisle, ''We've done our work. Even though we haven't had cooperation, we have reached a conclusion as best we can, and here it is.'' I have told the Senators on both sides of the aisle over the past year and 3 months how we deal with you. I am not interested in causing undue delay or difficulty for any Senator here with or without prejudice. But I must be able, along with other Senators, to say that we did our work, we fulfilled our constitutional responsibility, and then make a recommendation. I will be glad to yield further if you like.

Mr. DORGAN. If the Senator will yield, he clearly should and will not be surprised at concern expressed now in September about this issue. Those concerns were registered in July and early August, and the Senator understands that we have a Senator from Louisiana whose election is still being contested, and it is now September. I just want to, if I might, just show you some of what is happening in Louisiana in the press:

''When will investigation end? Voters might not be happy with prolonged debate.''

''Poll: State's voters believe Landrieu probe unnecessary.''

''Enough's enough,'' an editorial in the Times-Picayune.

''Senate investigation will hurt Louisiana.''

''No evidence of widespread fraud.''

It is September, and there is no demonstration of any kind that I am aware of that any irregularities existed in that election that would in any way overturn the results of the election, and yet we still have what I think is a concerted effort by some to drag this out and drag it out and drag it out.

Mr. LOTT. Yes.

Mr. DORGAN. Frankly, a lot are not happy about that.

Mr. LOTT. Yes, there has been an effort that has caused it to be delayed and dragged out.

Mr. DORGAN. I understand who the Senator from Mississippi says is at fault. I only know it is September. The first two lawyers who were hired, a Democrat and Republican, testified in front of the committee that hired them and said there is nothing here. The majority leader said that is not satisfactory.

Mr. LOTT. In the areas they had looked into. There had been nothing done with regard to the gaming activities and the so-called life organization in New Orleans.

Mr. DORGAN. My point is, if he will allow me one more minute, my point is that I think it is unfair to the Senator from Louisiana. I think it is unfair to the people of Louisiana. This ought to get wrapped up.

Our point is this: There is no intention to interrupt the business of the Senate, which is now to pass these appropriations bills in the month of September. We have to do that. There is no one out here objecting to the work on those appropriations bill.

Mr. LOTT. But you are going to object to a committee meeting, which makes it necessary for the work of the Appropriations Committee to be interrupted.

Mr. DORGAN. As the Senator knows, the regular order of the Senate is to have no committee meetings when the Senate is in session.

Mr. LOTT. But it has been the common practice for committees to be able to meet. All I am saying to you is, work with us and we can bring this to conclusion. But I am also saying that if you start interrupting the business of the Senate or committees, it will not be without action in return. We need to work together. We need to do these things privately and communication in the type of way we have done over the last 2 months. But if you start playing games with committees meeting on important issues like Superfund and, let me tell you, fast track, it will have an effect. Every action produces a reaction.

So let's not start down that trail. Let's continue to work together as we have, and we can complete our work on appropriations and on Superfund and on fast track and on ISTEA, and then return to our constituency.

Mr. DORGAN. If the Senator will yield for one more comment, the issue of delay applies especially and indelibly to the issue of the investigation in Louisiana, and delay, it seems to me, continued delay is unfair to Senator LANDRIEU and unfair to the people of Louisiana. It is not our intent to cause problems for the Senator from Mississippi in the scheduling of the Senate. I understand it is not easy to be involved in running this place. So it is not our intention to cause those kinds of problems. That is especially why——

Mr. LOTT. Let me just say, it is not easy, but it is a great pleasure. I'm enjoying it a lot.

Mr. DORGAN. You actually act like you are enjoying it. We have done a lot. This has been a pretty productive year, but at least a good number on our side say with respect to delay, one of the delays that occurs now in the Senate is the delay on this investigation and the end of the investigation, and the investigation has found nothing on the issue of this contested Senate election. We hope that we will get beyond that and get on with the business and not have that hanging over the head of Senator LANDRIEU or the people of Louisiana.

So our point is this: Let's continue with the Senate business. Let's pass these appropriations bills, get them to the President, get them signed. That is the regular order. Let's also resolve this issue with the Louisiana election. It is now September. It is not March or April or July. It is September, and it is long past the time when that should have been resolved.

Mr. LOTT. Mr. President, I ask unanimous consent, at the end of my remarks, to have printed in the RECORD the history of this type of investigation, these type of allegations and the length of time they have gone on.

The PRESIDING OFFICER (Mr. BROWNBACK). Without objection, it is so ordered.

(See exhibit 1.)

Mr. LOTT. Mr. President, as a matter of fact, most of them, many of them, have gone on for weeks and months, including some Senators who serve here in the Senate right now, and they proceeded in the normal way. It is not my intention to delay this investigation and this conclusion. It is my intention to make sure that we have investigated all of the alleged fraud and abuses of election laws and illegal acts. When we have done that, I will press aggressively for a conclusion. But until that is done, with the cooperation of the Democrats, it will not end.

I yield the floor, Mr. President.

EXHIBIT 1

CONTESTED ELECTION CASES

(Prepared by the Office of Senate Legal Counsel, December 1996)

I. INTRODUCTION

The Constitution provides that ''Each House shall be the Judge of the Elections,

Returns, and Qualifications of its own Members. . . .''[1] The Senate has always been ''jealous of [this] constitutional right.''[2] Courts have consistently recognized that congressional actions in this area present nonjusticiable political questions beyond judicial review.[3] In *Reed et al.* v. *The County Comm'rs of Delaware County, Penn.*, the Supreme Court acknowledged that the Senate is the final judge of the elections of its members and held: ''[The Senate] is the judge of the elections, returns and qualifications of its members. . . . It is fully empowered, and may determine such matters without the aid of the House of Representatives or the Executive or Judicial Department.''[4]

II. SENATE REFUSAL TO SEAT STATE-CERTIFIED CANDIDATES

The Senate has been called upon to judge approximately 100 contested election cases. On only nine occasions, however, has the Senate denied a seat to the candidate whose election had been certified by the state.[5] Several of these cases involve fact patterns that are unlikely to be at issue in modern disputes. They are not examined in this memorandum.[6] Five cases, however, involve allegations that are more likely to be at issue in modern contested election cases: challenges to the accuracy of the ballot count, and challenged based on claims that the election results were tainted by fraud and corruption.

A. Inaccurate ballot counts

1. Steck v. Brookhart (1926)

The case of *Steck* v. *Brookhart* is the only occasion on which the Senate has overturned the result of a state-certified election and seated the contestant. Every other time that the Senate has overturned the results of a state-certified election, it has simply declared the seat vacant and left the state to decide how it should be filled.[7] In 1926, however, the Senate voted to unseat Republican Smith Brookhart from Iowa and replace him with his general election opponent, Democrat Daniel Steck.

Brookhart was certified the winner of the November 1924 Iowa Senate election after a state recount showed that he had gained a plurality of less than 800 votes out of the more than 900,000 ballots cast in a four-way race. In January 1925, his opponent Steck filed with the Senate a challenge to Brookhart's seating based on alleged irregularities in the vote count. In an unusual twist, the Iowa Republican State Central Committee, angered by Brookhart's failure to endorse the Coolidge presidential ticket, also challenged his election on the ground that Brookhart was not, as he had represented himself to be, a member of the Republican Party. The Senate allowed Brookhart to take his seat at the beginning of the 69th Congress in March 1925 and referred the challenges to the Committee on Privileges and Elections. Beginning in the summer of 1925, the Committee conducted an investigation of Brookhart's election, which included a recount in Washington, D.C. of each of the ballots cast. In March 1926, the Committee reported to the Senate that Steck had received a plurality of 1,420 votes and recommended that Brookhart be unseated and replaced by Steck. Much of the seven-day Senate debate concerned the applicability of Iowa election law to the vote count. The Committee majority took the position that the Senate was not constrained by Iowa law.[8] On April 12, 1926, the Senate, in a vote that crossed party lines and did not include Brookhart, voted by a margin of 45 to 41 to unseat Brookhart and replace him with Steck.

2. Durkin v. Wyman (1974–75)

In the 1975 contested election case of Durkin v. Wyman, the Senate, rather than declare the winner as it had done in Steck v. Brookhart, simply found the seat vacant. The initial count of the November 1974 New Hampshire Senate election showed Republican Louis Wyman ahead of Democrat John Durkin by 355 votes out of more than 200,000 cast. A subsequent state recount determined that Durkin had won the election by ten votes, and on November 27, 1974 the governor issued Durkin a ''conditional'' certificate of election. Wyman challenged the certification before the New Hampshire State Ballot Law Commission, which ruled on December 24, 1974 that Wyman had won the election by two votes. On December 27, 1974, the governor rescinded Durkin's ''conditional'' credentials and certified Wyman the victor. That same day, Durkin filed a petition with the Senate contesting Wyman's credentials. The matter was referred to the Rules Committee's Subcommittee on Privileges and Elections. The Subcommittee began its investigation, which included a day of hearings during sine die adjournment, before the 94th Congress convened. The Subcommittee refused to make a recommendation and passed the case onto the full Committee, which divided evenly on the matter. The full Committee then referred the case to the full Senate without a recommendation.

When it convened in January 1975, the Senate would neither seat Wyman nor declare the seat vacant. Instead, the Senate referred the matter to the Rules Committee again. After much debate, the Committee decided upon carefully crafted procedures to recount the approximately 3,500 disputed ballots. But despite spending more than 200 hours on the matter, the Committee could not agree upon whom should be seated. Eventually, the Committee reported the matter to the Senate without a recommendation. Beginning in June 1975, the Senate debated the case for six weeks. Six cloture votes could not cut off the Republican-led filibuster. The Senate was at an impasse. The case was resolved only when Durkin and Wyman agreed in late July 1975 to support a new election. The day after the candidates reached their compromise, the Senate voted 71 to 21 to declare the seat vacant. That action paved the way for a September 1995 election, which Durkin won decisively.

B. Corrupt elections

1. William Lorimer (1910–12)

On three occasions the Senate has determined that an election was so tainted with corruption that its results were invalid. Each time, the Senate declared the seat vacant. The first occurred in 1912 when the Senate voted to overturn the certified election of William Lorimer of Illinois. The Illinois legislature elected Lorimer to the Senate, where he took his seat in 1909. In May 1910, Lorimer asked the Senate to investigate allegations by the press that he had gained his seat through bribery. In December 1910, the Committee on Privileges and Elections reported to the Senate its determination that Lorimer's election was valid. The Committee majority argued for the application of a standard that had been established by precedent: the Senate would invalidate an election on the basis of corrupt practices only if the Senator knew of or sanctioned the corrupt activities or if those activities had changed the outcome of the election.[9] In March 1911, the Senate declared the election valid.

Repeated press reports of bribery in Lorimer's election forced the Senate to continue to probe the allegations, however, and in June 1911, the Senate created a special committee to conduct a second investigation. The second investigation took almost a year and involved the testimony of 180 witnesses. In May 1912, the special committee finally reported to the Senate that it could find no evidence linking Lorimer to the alleged corruption.[10] A minority report, however, cited evidence that seven Illinois legislators had been bribed to vote for Lorimer.[11] Moreover, the minority believed that there was significant evidence linking Lorimer to the bribes.[12] The minority argued that the evidence was sufficient for the Senate to rule that the election was invalid. In July 1912, following a public outcry and an extensive Senate debate, the full Senate sided with the minority and voted 55 to 28 to declare Lorimer's election invalid and his seat vacant. In a special election following Lorimer's ouster, Lawrence Y. Sherman was elected to fill the seat.

2. Frank L. Smith (1926–28)

The other two instances in which the Senate declared an election invalid because of corruption arose out of the work of a Special Committee that was created in May 1926 to investigate allegations of the corrupt use of campaign expenditures in primary elections in Pennsylvania and Illinois. Eventually, the scope of the Special Committee's investigation expanded to include allegations of corrupt practices in the November general election too. In both cases the Senate departed from its normal procedure and refused to seat the Senator-elect pending the outcome of its investigation. This departure from practice is probably best explained by the fact that an ongoing investigation had already uncovered substantial evidence of fraud and corruption by the time each of these Senators-elect presented his credentials to the Senate.

Despite the negative publicity from the investigation of his primary victory, Frank L. Smith won the November 1926 Illinois general election. The Special Committee continued its investigation and on January 17, 1928 reported to the Senate its recommendation that Smith not be seated. The committee concluded that Smith's election was tainted with fraud and corruption because he had received campaign contributions from public service corporations in Illinois while he was chairman of the state agency that regulated them. The Senate agreed and on January 19, 1928 voted 61 to 23 to deny Smith a seat. Smith resigned from office on February 9, 1928. Otis F. Glenn was elected to fill the vacancy, and took his seat December 3, 1928.

3. William S. Vare (1926–29)

William S. Vare, the Republican nominee for the Senate from Pennsylvania, also won the November 1926 general election despite the negative publicity surrounding the Special Committee's investigation of his primary win. His opponent in the general election, Democrat William B. Wilson, filed a petition challenging Vare's credentials, alleging corruption by Vare's supporters in the general election. Wilson's allegations included ''padded registration lists, 'phantom' voters who were actually dead or imaginary, criminal misuse of campaign funds, and voter intimidation.''[13] The Committee on Privileges and Elections conducted an investigation of Vare's general election campaign that supplemented the Special Committee's investigation into his primary victory. On February 22, 1929, the Special Committee, after an almost three-year probe, reported to the Senate its unanimous recommendation that Vare should not be seated because of the evidence of corruption it had uncovered, including thousands of instances of fraudulent registration. On December 5, 1929, the Committee on Privileges and Elections reported to the Senate its contrary determination that Vare's election was lawful. After a

* Footnotes at end of report.

day of debate, the Senate voted on December 6, 1929, by a margin of 66 to 15, that William Wilson had not been elected, and, by a margin of 58 to 22, that Vare should be denied a seat. On December 12, 1929, Joseph R. Grundy took Vare's seat by appointment.

C. Recent challenges

Since 1992, three Senate elections have been contested, but in none of these cases has the election result been overturned. In 1992, two petitions were filed asking the Senate to seat Senator-elect Coverdell conditionally pending the resolution of legal complaints concerning his election. One petition, filed by four Georgia citizens, asked that Senator-elect Coverdell be seated conditionally pending the resolution of a federal lawsuit brought by the four petitioners and Public Citizens, Inc. challenging the constitutionality of a Georgia law requiring a run-off between the top two candidates where no single candidate has won a majority in the general election. The second petition, filed by three Georgia citizens, asked the Senate to seat Senator-elect Coverdell conditionally until the Federal Election Commission (''FEC'') had an opportunity to investigate a complaint filed by the Democratic Senate Campaign Committee (''DSCC'') charging that the National Republican Senatorial Committee (''NRSC'') had exceeded campaign spending limits during the Georgia run-off election. Senator Coverdell was sworn in with accompanying language noting that he was being seated ''without prejudice'' to the Senate's right to consider the petitions before it.[14] Public Citizen's lawsuit challenging the constitutionality of the 1992 run-off election was dismissed by a federal district court in March 1993. The district court's decision was upheld on appeal in June 1993. In April 1995, the FEC concluded that it could not reach a verdict with respect to the charge that the NRSC had overspent during the run-off election.[15] The Rules Committee took no official action on the petitions.

Also in 1992, several petitions contesting the election of Senator Packwood were filed by Oregon voters. These petitions, later consolidated, argued that Senator Packwood had lied to the voters regarding his mistreatment of women and had thereby ''defrauded'' the electorate. The petitions asked that the election result be set aside. Like Senator Coverdell, Senator Packwood was seated without prejudice to the Senate's right to review the petitions.[16] By a vote of 16–0, the Rules Committee dismissed the petitions against Senator Packwood in May 1993. While the Committee did not formally report to the Senate, the Chairman advised the Senate of the Committee's decision not to proceed further with the inquiry and the Senate took no action.[17]

Finally, in 1994 California Senatorial candidate Michael Huffington filed a petition contesting the election of Senator Dianne Feinstein. In his petition, Huffington argued that some of the votes cast for Senator Feinstein were invalid and that he had won a majority of the valid ballots cast. Senator Feinstein was sworn in ''without prejudice'' to the Senate's right to consider the petitions before it.[18] Huffington withdrew his petition before the Rules Committee could report to the Senate.[19]

III. SENATE PROCEDURES IN CONTESTED ELECTION CASES

Unlike the House of Representatives, whose election contests are governed in part by codified procedures,[20] ''[t]he Senate has never perfected specific rules for challenging the right of a claimant to serve.''[21] Rather, Senate ''practice has been to consider and act upon each case on its own merits, although some general principles have evolved from the precedents established.''[22] A discussion of those general principles is set forth below.

A. Beginning the election contest

Senate election contests are most frequently begun with the filing of a petition by the losing candidate, addressed to the Senate, protesting the seating of the contestee and asserting a right to the seat in question. However, there is no requirement that the protest be made by a losing candidate. Petitions have also been filed by interested voters in the state,[23] and in *Steck v. Brookhart*, discussed above in section II, a protest was filed not only by the unsuccessful Democratic candidate, but by the state's Republican committee as well, which maintained that the certified winner of the election was not a proper party member.[24] Although no rule exists, recent practice has been to file the petition with the President of the Senate.[25] On other occasions, the petition has been sent to various members of the Senate majority and minority leadership.[26] Petitions of contest are not the only means available for instituting an election contest. A member may offer a resolution calling for an investigation of an election.[27] In addition, the Committee on Rules and Administration has asserted its right to investigate an election contest upon its own motion.[28] Recent Senate practice has been to refrain from investigating a contested election until the state has conducted its own review or recount, where such state remedies were available.[29]

B. Senate action upon filing of petition

1. The Decision to Seat

If a petition of contest is filed in advance of the presentation of credentials and swearing-in of senators-elect on the opening day of a new Congress,[30] the Senate must decide whether to seat the certified senator-elect pending resolution of the election contest. The practice of the Senate has generally been to treat a state certification that appears proper on its face[31] as *prima facie evidence that the member-elect is entitled to a Senate seat, and to seat him pending determining of his right to office:*

''[T]he orderly and constitutional method of procedure in regard to administering the oath to newly elected Senators [is] that when any gentleman brings with him or presents a credential consisting of the certificate of his due election from the executive of his State he is entitled to be sworn in, and that all questions relating to his qualification should be postponed and acted upon by the Senate afterwards.''[32]

Although this has been the usual Senate practice, the Senate retains its discretion to look behind such credentials and to refuse to seat a member-elect until it completes its adjudication of the election contest. For example, in the 1927 contest of *Wilson v. Vare* for a Pennsylvania Senate seat, discussed above in section II, the Senate asked the certified senator-elect, William Vare, to step aside. The Senate refused to seat Vare until a special committee, previously formed to investigate excessive expenditures and corrupt practices in the 1926 senatorial campaigns in Pennsylvania and Illinois, had completed its investigation and made its final report.[33] This exercise of power was upheld in a case arising out of the Vare investigation, *Barry v. U.S. ex rel. Cunningham*,[34] in which the Supreme Court held that the Senate had the discretion to decide whether to accept Vare's credentials and administer him the oath, pending adjudication of the election contest.[35]

The Senate most recently refused to seat a member-elect presenting state credentials in the 1975 election contest between John Durkin and Louis Wyman for a New Hampshire Senate seat, also discussed above in Section II. A certificate of election had been issued to Durkin, but, after a recount, the certificate was rescinded and reissued to Wyman. At the swearing-in of new members-elect, both Wyman and Durkin were asked to stand aside,[36] and the certificates were referred to the Committee on Rules and Administration.[37] After neither the Rules Committee nor the full Senate was able to resolve the dispute, the seat was ultimately declared vacant.[38]

The more common practice in recent years has been to seat the certified member-elect against whom a petition of contest has been filed, but to administer the oath of office to him ''without prejudice.''[39] The effect of administering the oath without prejudice is, it has been said, ''a two-sided proposition—without prejudice to the Senator and without prejudice to the Senate in the exercise of its right.''[40] The ''right'' of the Senate is its right, by majority vote, to later unseat the member or affirm his membership after the issues respecting his right to the seat are resolved.[41] The most recent explanation of this practice came from then Majority Leader Dole at the beginning of the 104th Congress in connection with administering the oath to Senator-elect Feinstein, whose election had been challenged by her opponent. It was Senator Dole's view that the phrase ''without prejudice'' had no effect upon the rights of the Senator to act as a Senator, or the rights of the Senate to act as the judge of the Senator's election:

''The oath that will be administered to Senator Feinstein, just as the oath that will be administered to all other Senators-elect, will be without prejudice to the Senate's constitutional power to be the judge of the election of its members. . . . [T]he making of this statement [that the oath is administered ''without prejudice''] prior to the swearing in of a challenge[d] Senator-elect serves the purpose of acknowledging formally that the Senate has received an election petition and that it will review the petition in accordance with its customary procedures.''—141 Cong. Rec. S4 (daily ed. Jan. 4, 1995).[42]

2. Reference to committee

The petition of contest and other papers that have been filed relating to an election contest are referred to the Committee on Rules and Administration for investigation and recommendations.[43] The committee has jurisdiction over ''[c]redentials and qualifications of Members of the Senate [and] contested elections''[44] Under the rules of the Senate, standing committees continue in existence and maintain their power during the recesses and adjournments of the Senate.[45] The committee, on the basis of this rule and the Senate precedents that underlie it, has asserted its power to continue investigations without interruption during periods of adjournment.[46] The committee has also began investigations of election contests in advance of the convening of the Congress to which the member-elect was elected.[47]

C. Committee practice and procedure

1. Pleadings before the committee

In most election cases, the protest takes the form of a petition and complaint, similar to that in a lawsuit, describing in varying detail the grounds upon which the challenge is based. The contestee files a response, typically in the form of an answer or an answer combined with a motion to dismiss. The parties may submit follow-up replies, and in some cases the contestant, either on his own or upon the request of the committee, may file one or more amended complaints. In addition to formal pleadings, the parties may

submit various legal memoranda on issues relevant to the investigation, for example, on questions concerning the scope and applicability of the state's election laws.[48]

2. Committee hearings

Committee hearings may be held not only in Washington, but also at the site of the election[49] The parties and their counsel are generally permitted an active role in these hearings. Either the contestants or their counsel typically make opening statements,[50] and counsel may be permitted to make subsequent legal arguments and otherwise present their client's positions during the hearings.[51] The parties may be permitted to call witnesses,[52] and counsel may be given the right to question and cross-examine witnesses themselves.[53] As might be expected given the politically charged nature of the issues that may arise in these disputes, hearings may be lengthy, particularly if a recount is conducted. For example, the Rules Committee held 46 sessions and 698 rollcall votes in its attempt to resolve the *Durkin* v. *Wyman* content.[54]

3. Committee recount procedures

In many cases, the nature of the protest is such that the committee will not engage in a recount. In some cases, no recount will be requested by the contestant. For example, in the 1975 *Edmondson* v. *Bellmon* contest, the challenger's sole complaint was that the voting machines in one county had been programmed in violation of Oklahoma law.[55] In other cases, the committee may decide to make its recommendations exclusively on the basis of the pleadings and other evidence introduced by the parties, and reject any full-scale investigation or recount.[56] The committee may also refuse to conduct a recount because of the contestant's failure to exhaust available state recount procedures.[57] The decision to conduct a recount is generally made by the formal adoption of a resolution by the committee;[58] the resolution may authorize a recount on less than a statewide basis, limited to selected counties in the state or to a particular group of protested ballots.[59]

The first step of a recount is to secure immediate possession of all election records bearing on the contest. Most Senate recounts have been conducted in Washington.[60] Committee staff members, often together with the Sergeant at Arms, may be sent to the state to seal all voting machines and to bring back paper ballots, tally sheets, ballot stubs, and other election records.[61] In some cases, committee subpoenas have been issued to the responsible state election officials to obtain these records.[62] Stringent security precautions have been observed in transporting these materials to Washington and in storing them during the recount. For example, in the *Durkin* v. *Wyman* contest, ballots were kept in a locked room in the basement of the Russell Office Building with Capitol Police officers on guard around the clock; two padlocks were placed on the door, with a different key given to the ranking majority and minority members of the committee.[63]

Often extensive field investigations may be necessary at various stages of the recount process. Voting machines may need to be inspected to verify that the machines accurately recorded the votes cast and that the total votes recorded on the machines corresponds with the number of voters listed on the pollbooks.[64] Registration records may need to be examined and compared with the pollbooks to ensure that only legally authorized voters are included in the count.[65] In many election cases, charges of a wide variety of election irregularities will be at issue, such as illegal assistance or corruption of voters, tampering with ballot boxes or voter machines, violation of the secrecy of the ballot, and fraudulently altered ballots. Investigation of such questions may require a significant commitment of committee manpower. For example, in investigating charges of violations of New Mexico voters' constitutional right to a secret ballot in *Hurley* v. *Chavez,* committee investigators interviewed and obtained signed and witnessed statements from thousands of voters throughout the state. A number of Spanish-speaking investigators were engaged by the committee to aid in this effort.[66]

4. Committee report and recommendations

Upon the completion of its investigation and any recount, the committee submits to the Senate a report, together with an accompanying resolution, recommending a final disposition of the election contest. The report may also contain minority views.[67] There are several courses of action that the committee may recommend to the Senate. The committee may recommend that the petition of contest by dismissed. Dismissals of contests are commonly based on the ground that the allegations of the petition are too general to justify committee investigation.[68] or that even if the allegations are accepted as true, they would be insufficient to affect the result of the election.[69] Alternatively, based upon its investigation, the committee may recommend that a certain candidate has received a majority of the valid votes and should be declared the winner.[70] Finally, the committee may conclude that no winner can be determined, and recommend that the election be set aside and the seat declared vacant so that a special election can be held.

However, in the two most recent Senate contested election cases in which the full Senate has acted, both occurring during the 94th Congress, the committee was unable to agree upon recommendations for final disposition of the contests. As noted in the *Durkin* v. *Wyman* contest, the inability of the committee to resolve the numerous issues on which it was evenly divided prevented it from reaching agreement on a final recommendation; the committee was able only to report a resolution seeking Senate determination of the issues upon which the committee had deadlocked.[72] In the *Edmondson* v. *Bellmon contest* the committee found that the Oklahoma election laws had been violated and that those violations could have affected the results of the election, but it was unable to determine who would have won the election had the violations of law not occurred. The committee reported a resolution requesting that the Senate determine the outcome of the election.[73] A minority report, which charged that the majority report was partisan, recommended that the challenge be dismissed. After four days of debate, the Senate voted 47 to 46 to table the majority's resolution. By voice vote the Senate then declared that the state-certified victor should keep his seat.

D. Standard of review

The contestant in an election has the burden of proof to establish, by a preponderance of evidence,[74] the allegations raised in his petition. Sufficient evidence must be offered to overcome the presumption that the official returns are prima facie evidence of the regularity and correctness of the election[75] and that election officials have properly performed their legal duties.[76] Not only must the contestant overcome these presumptions of regularity, but he must affirmatively establish that the irregularities complained of would affect the result of the election.[77] In addition to these general standards, common to all election contests, the committee will often adopt detailed evidentiary presumptions to govern its consideration of the factual issues that may be raised in a particular contest.[78]

E. Application of State election laws

The Senate has generally attempted to observe state election laws in resolving election contests. However, as the final judge of its elections, the Senate is not bound by state election laws, and has exercised its power to disregard those laws, especially in instances where their technical application would invalidate the will of the voters.[79] As Senator Cannon stated about the Senate's investigation of the *Durkin v. Wyman* contest, ''The U.S. Senate, as the final judge or arbiter of elections, returns, and qualifications of its Members, is not bound by the statutes and case law of a State, although the committee has consistently given weight to the New Hampshire law consistent with the attempt to determine the intent of the voter.''[80] In determining whether to give effect to state election laws, a distinction is often drawn between ''directory'' and ''mandatory'' provisions of state law. ''Mandatory'' provisions affecting the right of suffrage itself have been more strictly followed than ''directory'' provisions, such as those governing ministerial functions of state election officials and technical requirements concerning the manner of marking ballots.

F. Senate disposition

Election contests are generally disposed of, following floor consideration and debate, pursuant to Senate resolution. A resolution from the committee disposing of a contested election case is highly privileged; it does not have to lie over a day and has precedence over most unfinished business or motions.[81] The parties to the election contest, including bona fide claimants and senators-elect who have not been permitted to take the oath of office, are usually granted floor privileges during the debate on the election contest;[82] occasionally, they have even been granted the privilege of addressing the Senate to present their case.[83]

The Senate may adopt a resolution dismissing the complaint; such resolutions are frequently adopted by unanimous consent with little or no floor debate.[84] If a senator-elect who has previously been sworn in is determined by the Senate to be entitled to the seat, the resolution will declare that he was duly elected for a six-year term as of the date he received the oath.[85] Where the contestant is declared the winner and the incumbent is unseated, or if no one had earlier been sworn in, upon adoption of the resolution, the prevailing party has been immediately given the oath of office and seated.[86] In most instances, where the Senate has determined that the state-certified victor should not be seated, it has declared the seat vacant.[87]

G. Reimbursement of election contest expenses

The Senate has by resolution authorized the payment of expenses incurred by the parties in contested election cases.[88] Reimbursement is not automatic, however, and the Senate has refused to authorize payment of expenses even in instances where the committee recommended such payment.[89] Most of these resolutions authorizing reimbursement specify the amount of the payments, typically less than the actual expenses incurred by the parties during the contest. In the *Durkin* v. *Wyman* contest, however, the resolution authorized payments out of the contingent fund of the Senate to reimburse both Durkin and Wyman in an amount to be determined by the committee.[90]

DURATION OF CONTESTED ELECTION CASES

Investigations

Edmondson v. Bellmon, Oklahoma, 1975 election: 18 months; investigation delayed 9 months during New Hampshire case.

Hurley v. Chavez, New Mexico, 1952 election: 15 months; fraud investigation.

Tydings v. Butler, Maryland, 1950 election: 8 months; campaign finance and slander investigation.

Sweeney v. Kilgore, West Virginia, 1948 election: 18 months; fraud investigation.

Hook v. Ferguson, Michigan, 1948 election: 9 months; fraud investigation.

Long and Overton, Louisiana, 1932 election: 20 months; fraud investigation by special committee.

Heflin v. Bankhead, Alabama, 1930 election: 17 months; fraud investigation.

Smith, Illinois, 1926 election: 20 months; campaign finance and bribery investigation by special committee.

Wilson v. Vare, Pennsylvania, 1926 election: 3½ years; fraud and campaign finance investigation by special committee.

Peddy v. Mayfield, Texas, 1992 election: Over 2 years; fraud investigation and recount.

Ford v. Newberry, Michigan, 1918 election: 3½ years; fraud and campaign finance investigation.

Recounts

Durkin v. Wyman, New Hampshire, 1975 election: 9 months.

Markey v. O'Conor, Maryland, 1946 election: 16 months.

Steck v. Brookhart, Iowa, 1924 election: 15 months.

Note—dates measured from date of election.

Case	Any Committee Action Taken During Sine Die Adjournment of Congress?	State Certified Candidate Seated?
Steck v. Brookhart	Yes	Yes.
Durkin v. Wyman	Yes	No.
William Lorimer	Yes	Yes.
Frank L. Smith	Yes	No.
Wilson v. Vare	Yes	No.

FOOTNOTES

[1] U.S. Const. art. I, §5, cl. 1.

[2] *Ford* v. *Newberry*, S. Rep. No. 277, pt. 1, 67th Cong. 1st Sess. 9 (1921).

[3] *Roudebush* v. *Hartke*, 405 U.S. 15, 19 (1972).

[4] 277 U.S. 376, 388 (1928).

[5] *See generally United States Senate Election, Expulsion and Censure Cases 1793–1990*, S. Doc. No. 33, 103d Cong., 1st Sess. (1995) (hereafter ''Senate Election Cases''). This publication, compiled by the Senate Historian's Office, contains a brief description of all Senate election, expulsion, and censure cases during the period 1793 to 1990.

[6] Two involve the unseating of Senators who were found ineligible under the Constitutional requirement that a Senator be a U.S. citizen for nine years; *see Senate Election Cases* at 3 (Albert Gallatin, 1793–94) and 54 (James Shields, 1849); and two others involve challenges to the method to elect U.S. Senators used by state legislatures prior to the 1913 ratification of the Seventeenth Amendment, *id.* at 74 (James Harlan, 1855–57) and 127 (John Stockton, 1865–66).

[7] *Id.* at 424 (*John A. Durkin* v. *Louis C. Wyman*, 1974–75); *id.* at 333 (Frank L. Smith, 1926–28); *id.* 328 (*William B. Wilson* v. *William S. Vare*, 1926–29); *id.* at 283 (William Lorimer, 1910–12); *id.* at 129 (John P. Stockton, 1865–66); *id.* at 76 (James Harlan, 1855–57); *id.* at 55 (James Shields, 1849); *id.* at 4 (Albert Gallatin, 1793–94).

[8] The Senate has maintained consistently the majority's position. *See infra* at 26, 27.

[9] S. Rep. No. 942, pt. 1, 61st Cong., 3d Sess. 2 (1910).

[10] S. Rep. No. 769, 62d Cong., 2d Sess. 91 (1912).

[11] *Id.* at 100–14.

[12] *See id.* at 101 (noting that one of the bribed legislators had successfully blackmailed Lorimer to obtain employment, and that an ''innocent [man] would indignantly have refused to have anything else to do with such a blackmailer.'')

[13] *Senate Election Cases* at 325.

[14] 139 Cong. Rec. S4–S7 (daily ed. Jan. 5, 1993). As discussed below, *see* discussion *infra* at 17, such qualifying language probably has no legal effect.

[15] However, the FEC found that Senator Coverdell's 1992 campaign committee had accepted $66,000 in improper contributions from 95 people. The FEC fined the committee $32,000 and directed it to return the improper contributions.

[16] 139 Cong. Rec. S4–S7 (daily ed. Jan. 5, 1993).

[17] *See* 139 Cong. Rec. S6294 (daily ed. May 21, 1993) (statement of Senator Ford).

[18] 141 Cong. Rec. S4 (daily ed. Jan. 4, 1995).

[19] Michael Doyle, *Huffington Concedes Nov. 8 Senate Race*, The Fresno Bee, Feb. 8, 1995, at A3.

[20] The Federal Contested Election Act of 1969, 2 U.S.C. §§381–396 (1994). Prior to 1969, House election contests were governed by the provisions of the Contested Elections Act, 2 U.S.C. §§201–226 (repealed), which derived from the Act of Feb. 19, 1851, ch. 11, 9 Stat. 568.

[21] *Senate Election, Expulsion and Censure Cases from 1793 to 1972*, S. Doc. No. 7, 92d Cong., 1st Sess. vii (1972).

[22] *Id.*

[23] *See William Langer*, S. Rep. No. 1010, 77th Cong., 2d Sess. 1 (1942). Following the 1992 election, five groups of Oregon voters filed petitions with the Senate contesting the election of Senator Robert Packwood, charging that he had engaged in election fraud by lying during the campaign about his treatment of women.

[24] *Steck* v. *Brookhart*, S. Rep. No. 498, 69th Cong., 1st Sess. 2 (1926).

[25] *See, e.g., In the Matter of the United States Seat from California in the 104th Congress of the United States* (1994) (petition filed by Michael Huffington contesting the election of Senator Dianne Feinstein); *Petition to Deny Seating to, or Seat Conditionally, Senator Bob Packwood* (1992) (filed by Oregon voter Keith Skelton); *Petition by Certain Voters and Citizens of the State of Oregon* (1992) (also contesting the election of Senator Packwood).

[26] *Petition Challenging the Election of Paul Coverdell* (1993) (filed by three Georgia citizens).

[27] Investigations of improper campaign expenditures and corrupt practices have often been instituted in this manner. *See, e.g., Frank L. Smith, Senate Election Cases, supra* note 5, at 330–33; Wilson v. Vare, id. 323–29.

[28] *See Hurley v. Chavez*, S. Rep. No. 1081, 83d Cong., 2d Sess. 2 (1954).

[29] *See* S. Rep. No. 597, 94th Cong., 2d Sess. 8 (1976) (*Edmondson v. Bellmon*); S. Rep. No. 156, part 2, 94th Cong., 1st Sess. 3–6 (1975) (*Durkin v. Wyman*); *Senate Election Cases at 419* (*Roudebush v. Hartke, 1970–72*); id. at 399 (*Hurley v. Chavez, 1952–54*). *See also* S. Rep. No. 802, 81st Cong., 1st Sess. 9 (1949) (*Sweeney v. Kilgore*) (where contestant had withdrawn his request for a recount by the state, the Subcommittee did not conduct a recount in keeping ''with the policy of the subcommittee to conduct no recount in any State wherein the laws of that State provide for a recount by candidates for United States Senator.''). But *see Senate Election Cases* at 391–93 (*Tydings v. Butler, 1950–51*) (no effort to pursue state remedies where Senate was conducting a hearing and investigation into allegations of campaign irregularities, including slander and smear tactics). Following the 1994 general election, Michael Huffington contested the election of Senator-elect Dianne Feinstein in the Senate without first seeking a recount in California. Huffington later withdrew his Senate petition before the Rules Committee could report to the Senate. *See* Susan Yoachum, *Huffington Concedes, Drops Voter Challenge*, S.F. Chron., Feb. 8, 1995, at A3; Michael Doyle, *Huffington Concedes Nov. 8 Senate Race*, The Fresno Bee, Feb. 8, 1995, at A3.

[30] There is no such requirement; petitions are frequently filed after the contestee has been seated. *See, e.g., Hook v. Ferguson* (1949), *Senate Election Cases, supra* note 5, at 386.

[31] The Senate has adopted forms of suggested certificates of election and appointment of senators. *See* Rule 2.3, Standing Rules of the Senate, S. Doc. 8, 104th Cong., 1st Sess. 2 (1994). Credentials should be signed by the governor and attested by the secretary of state of the state in which the election was held.

[32] 37 Cong. Rec. 1 (1903) (statement of Sen. Hoar). *See also Riddick's Senate Procedure*, S. Doc. No. 28, 101st Cong., 2d Sess. 704 (Alan S. Frumin ed., rev. ed. 1992) (''Under orderly procedure, a Senator-elect, upon presentation of credentials, should be sworn in, and all matters touching his qualifications should be determined thereafter.''); *Senate Election Cases, supra* note 5, at xviii.

[33] 60 Cong. Rec. 4, 337–38 (1927). As discussed above in Section II, the certified senator-elect from Illinois, Frank L. Smith, was also asked to step aside, based upon similar indications for fraud and corruption discovered by the special committee. *See Senate Election Cases, supra* note 5, at 333. The Senate has also refused to seat members-elect presenting credentials in a number of cases predating the adoption of the Seventeenth Amendment in 1913. In many of these cases, the credentials were invalid for reasons either apparent on their face or otherwise within the knowledge of the Senate, for example, because a governor was attempting to make an appointment to fill a vacancy which had not been filled by the legislature while it was in session. *E.g. Matthew Quay* (1899), *id.* at 261–62; *Henry W. Corbett* (1897), *id.* at 253–55; *Lee Mantle* (1893), *id.* at 243–45. A number of cases involved instances where more than one candidate presented credentials for a seat. *E.g., Lucas v. Faulkner* (1887), *id.* at 230–31; *Reynolds v. Hamilton* (1870), *id.* at 164–65; *Stanton v. Lane* (1861), *id.* at 92–94. Many occurred during the Civil War when there was concern about seating senators disloyal to the Union cause or senators representing states in a state of rebellion. *E.g., Fishback, Baxter and Snow* (1864), *id.* at 117–20; *Cutler Smith and Hahn* (1864), *id.* at 121–23; *Segar and Underwood* (1865), *id.* at 124–26.

[34] 279 U.S. 597 (1929).

[35] *Id.* at 614–15.

[36] 121 Cong. Rec. 4–5 (1975).

[37] 121 Cong. Rec. 1495 (1975).

[38] 121 Cong. Rec. 25960–61 (1975). *See generally*, D. Tibbetts, *The Closest U.S. Senate Race in History* (1976).

[39] *See, e.g.*, 141 Cong. Rec. S4 (daily ed. Jan. 4, 1995) (Senator-elect Feinstein); 139 Cong. Rec. S4–S7 (daily ed. Jan. 5, 1993) (Senators-elect Coverdell and Packwood); 121 Cong. Rec. 8 (1975) (Senator-elect Bellmon); 117 Cong. Rec. 6 (1971) (Senator-elect Hartke); 110 Cong. Rec. 18120 (1964) (Senator-elect Salinger) (appointee); 97 Cong. Rec. 3 (1951) (Senator-elect Butler).

[40] 87 Cong. Rec. 3 (1941) (statement of Senator Barkley on the seating of Senator-elect Langer).

[41] *See* 87 Cong. Rec. 4 (1941) (ruling of the presiding officer that ''[i]f this agreement is entered into, only a majority of the Senate will be required to pass on the qualifications of the Senator-elect'').

[42] Democratic Leader Senator Daschle added his concurrence to Senator Dole's remarks. *Id.* In 1993 Senators Coverdell and Packwood took the oath of office while challenges to their election were pending. At that time, Senator Dole, as Republican Leader, stated his view that ''the phrase 'without prejudice' used today is of course meaningless, in its effect upon any subsequent Senate action.'' 139 Cong. Rec. S7 (daily ed. Jan. 4, 1993).

[43] *See, e.g.*, 121 Cong. Rec. 8 (1975) (referral of petition of contest and reply in *Edmondson* v. *Bellmon* contest). Election contests were often initially heard by the Subcommittee on Privileges and Elections of the Rules Committee; that subcommittee was disbanded in 1977. Election contests during the period 1871–1946 were referred to the Committee on Privileges and Elections; prior to 1871, such disputes were usually referred to special committees or to the Committee on the Judiciary. In this section of this memorandum, the term ''committee'' will be used generally to refer to the Rules Committee and its predecessor committees.

[44] Rule 25.1(n)(1)(4), Standing Rules of the Senate, S. Doc. No. 104–8, *supra* note 31, at 30 (1944).

[45] Rule 26.1, Standing Rules of the Senate, S. Doc. No. 104–8, *supra* note 31, at 36.

[46] *See* 121 Cong. Rec. 1472 (1975) (statement of Sen. Allen); *Senate Election, Expulsion and Censure Cases From 1909–1960*, S. Doc. No. 71, 87th Cong., 2d Sess. viii (1962).

[47] *See Durkin* v. *Wyman*, S. Rep. No, 94–156, part 2, *supra* note 29, at 5–6.

[48] *See, e.g., Senator from Oklahoma: Hearings Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration*, 94th Cong., 1st Sess. 221–464 (1975) (hereinafter ''*Edmondson* v. *Bellmon Hearings*'') (collecting together pleadings and memoranda of contestants).

[49] For example, in the *Edmondson* v. *Bellmon* contest, committee staff members held hearings in Oklahoma, which were followed with hearings before the committee in Washington. S. Rep. No. 94–597, *supra* note 29, at 5–6 (1976).

[50] *See, e.g., Edmondson v. Bellmon* Hearings, *supra* note 48, at 11–47; *Senator from New Hampshire: Hearings Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration*, 93d Cong., 2d Sess. 136–205 (1975) (hereafter ''*Durkin v. Wyman* Subcommittee Hearings''); *Steck v. Brookhart*, S. Rep. No. 69–498, *supra* note 24, at 5.

[51] *See Durkin v. Wyman*, S. Rep. No. 94–156, part 1, supra note 29, at 2; *Senator from New Mexico: Hearings Before Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration*, 83d Cong., 1st Sess. 159–82 (1953) (hereafter ''*Hurley v. Chavez* Hearings'') (argument of counsel on motion of dismiss).

[52] *See Edmondson v. Bellmon Hearings, supra* note 48, at 49–50.

[53] *See Steck v. Brookhart*, S. Rep. No. 69–498, supra note 24, at 6–7; *Johnson v. Schall*, S. Rep. No. 1021, 69th Cong., 1st Sess. 3–8 (1926).

[54] S. Rep. No. 94–156, part 1, *supra* note 29, at 2. This was in addition to hearings held by the Subcommittee on Privileges and Elections. *See Durkin v. Wyman* Subcommittee Hearings, *supra* note 50.

[55] S. Rep. No. 94–597, *supra* note 29, at 3–5.

[56] *See Willis v. Van Nuys,* S. Rep. No. 281, 76th Cong., 1st Sess. 8 (1939) (rejecting recount because of the absence of a prima facie showing that it might result in unseating of the contestee); *Bursum v. Bratton,* S. Rep. No. 724, 69th Cong., 1st Sess. 7–10 (1926) (recount unjustified because no preliminary evidence was offered tending to cast doubt upon the accuracy of the official returns).

[57] *See Sweeney v. Kilgore,* S. Rep. No. 81–802, *supra* note 29, at 9.

[58] *See, e.g., Hurley v. Chavez,* S. Rep. No. 83–1081, *supra* note 28, at 265.

[59] For example, in the *Durkin v. Wyman* contest, the committee ordered a recount of the approximately 3,500 ballots that had been before the state ballot law commission. S. Rep. No. 94–156, part 2, *supra* note 29, at 8. The committee may also begin with a limited recount to determine if there are sufficient grounds for a wider investigation and statewide recount. *See O'Conor v. Markey,* S. Rep. No. 1284, 80th Cong., 2d Sess. 3, 11–12 (1948) (preliminary five-county recount subsequently widened to statewide recount in light of trend reducing incumbent's lead).

[60] An alternative approach is to count the ballots at locations in the state, and only bring to Washington those ballots remaining in dispute for committee review. *See O'Conor v. Markey,* S. Rep. No. 80–1284, *supra* note 59, at 3.

[61] *See Durkin v. Wyman,* S. Rep. No. 94–156, part 1, *supra* note 29, at 4; *Heflin v. Bankhead,* S. Rep. No. 568, 72d Cong., 1st Sess. 36 (1932); *Peddy v. Mayfield,* S. Rep. No. 973, 68th Cong., 2d Sess. 3 (1925).

[62] *See Hurley v. Chavez,* S. Rep. No. 83–1081, *supra* note 28, at 75; *Steck v. Brookhart,* S. Rep. No. 69–498, *supra* note 24, at 2.

[63] D. Tibbetts, *supra* note 38, at 60.

[64] *See Durkin v. Wyman,* S. Rep. No. 94–156, part 1, *supra* note 29, at 35; *Hurley v. Chavez,* S. Rep. No. 83–1081, *supra* note 28, at 276.

[65] *Hurley v. Chavez, id.* at 55.

[66] *Id.* at 16. In the *Sweeney v. Kilgore* contest, 22 investigators hired by the committee spent a total of 7,006 man-days over a period of 18 months conducting field investigations. S. Rep. No. 81–802, *supra* note 29, at 6.

[67] *See Edmondson v. Bellman,* S. Rep. No. 94–597, *supra* note 29, at 27–50; *Steck v. Brookhart,* S. Rep. No. 69–498, *supra* note 24, at 23–33.

[68] *See Pritchard v. Bailey,* S. Rep. No. 1151, 72d Cong., 2d Sess. 1 (1933); *Hoidale v. Schall,* S. Rep. No. 1066, 72d Cong., 2d Sess. 6 (1933).

[69] *See Willis v. Van Nuys,* S. Rep. No. 76–281, *supra* note 56, at 2; *Heflin v. Bankhead,* S. Rep. No. 72–568, *supra* note 61, at 20–21.

[70] *E.g., Sweeney v. Kilgore,* S. Rep. No. 81–802, *supra* note 29, at 18; *Hook v. Ferguson,* S. Rep. No. 801, 81st Cong., 1st Sess. 1 (1949); *O'Conor v. Markey,* S. Rep. No. 80–1284, *supra* note 59, at 17; *Steck v. Brookhart,* S. Rep. No. 69–498, *supra* note 24, at 15; *Bursum v. Bratton,* S. Rep. No. 69–724, *supra* note 56, at 10.

[71] *See Hurley v. Chavez,* S. Rep. No. 83–1081, *supra* note 28, at 5. The Senate rejected the committee's recommendation and permitted Chavez to retain his seat.

[72] S. Rep. No. 94–156, part 1, *supra* note 29, at 1.

[73] S. Rep. No. 94–597, *supra* note 29, at 1–2.

[74] Although the standard has not been expressly stated by the committee in these terms, this would appear to be the most accurate characterization of the burden of proof that the committee has applied in election contests. *See, e.g., Wilson* v. *Vare,* S. Rep. No. 47, 71st Cong., 2d Sess. 2 (1929) (''it must be found, not beyond a reasonable doubt, perhaps, but it must be the conviction of reasonable men, at least, that the proof sustained the charges'').

[75] *Pritchard* v. *Bailey,* S. Rep. No. 72–1151, *supra* note 68, at 1.

[76] *O'Conor* v. *Markey,* S. Rep. No. 80–1284, *supra* note 59, at 14; *Wilson* v. *Vare,* S. Rep. No. 71–47, *supra* note 74, at 5 (1927); *Sweeney* v. *Kilgore,* S. Rep. No. 81–802, *supra* note 29, at 7.

[77] *Id.* at 18; *Edmondson* v. *Bellmon,* S. Rep. No. 94–597, *supra* note 29, at 22; *Heflin* v. *Bankhead,* S. Rep. No. 72–568, *supra* note 61, at 21; *Senate Election Cases, supra* note 5, at 384 (In *Sweeney* v. *Kilgore,* the committee found that fraudulent ballots did not effect the outcome of the election; therefore, the committee recommended that the state-certified victor retain his seat.).

[78] For example, in the *Hurley* v. *Chavez* contest, the committee adopted a number of evidentiary presumptions to govern its recount. Two examples are illustrative. The recount rules provided that, absent direct or circumstantial proof to the contrary, any erasure marks on a ballot would be treated as made by the voter and the ballot would be thrown out. On the other hand, where a ballot had been mutilated or had its secret number exposed, absent proof to the contrary, someone other than the voter would be deemed responsible and the vote would be counted. S. Rep. No. 83–1081, *supra* note 28, at 268.

[79] Likewise, the Senate is not bound by the decisions of state courts or the results of state recount proceedings, though such state determinations are often accorded ''great weight.'' *Johnson* v. *Schall,* S. Rep. No. 69–1021, *supra* note 53, at 9. For additional references, *see supra* note 29.

[80] 121 Cong. Rec. 18620 (1975).

[81] *See* 84 Cong. Rec. 3611 (1939) (statement of Sen. George); 76 Cong. Rec. 3544 (1933) (statement of President pro tempore). *See also Riddich's Senate Procedure, supra* note 32, at 706.

[82] *Id.* at 560. In the *Durkin v. Wyman* contest, both parties, together with their counsel, were permitted to sit in the rear of the Senate chamber during the debate. *See* D. Tibbetts, *supra* note 38, at 123. Durkin, by unanimous consent, was given the privilege of the floor. 121 Cong. Rec. 1472 (1975). No such motion was required for Wyman, as he already had floor privileges as an ex-senator.

[83] *See* S. Res. 2, 70th Cong., 1st Sess., 69 Cong. Rec. 338 (1927) (according William Vare ''the privileges of the floor of the Senate for the purpose of being heard touching his right to receive the the oath of office and to membership in the Senate''). There were even early instances when counsel for the parties were permitted to address the Senate. *See* 17 Annals of Cong. 187–207 (1808) (statement of Francis Scott Key); *id.* at 207–234 (statement of R.G. Harper).

[84] *See, e.g.,* S. Res. 123, 76th Cong., 1st Sess., 84 Cong. Rec. 4183 (1929) (*Willis v. Van Nuys*); S. Res. 115, 76th Cong., 1st Sess., 84 Cong. Rec. 3611–12 (1929) (*Neal v. Steward*); S. Res. 343, 72d Cong., 2d Sess., 76 Cong. Rec. 3544–45 (1933) (*Hoidale v. Schall*).

[85] *See* S. Res. 142, 81st Cong., 1st Sess., 95 Cong. Rec. 10321 (1949) (*Sweeney v. Kilgore*); S. Res. 141, 81st Cong., 1st Sess., 95 Cong. Rec. 10321 (1949) (*Hook v. Ferguson*); S. Res. 234, 80th Cong., 2d Sess., 94 Cong. Rec. 6160 (1948) (*O'Connor v. Kilgore*).

[86] *See* S. Res. 194, 69th Cong., 1st Sess., 67 Cong. Rec. 7301 (1926) (*Steck v. Brookhart*).

[87] *See, e.g., Senate Election Cases, supra* note 5, at 333 (Frank L. Smith, 1926–28); *id.* at 328 (*William B. Wilson v. William S. Vare,* 1926–29); *id.* at 283 (William Lorimer, 1910–12). *But see id.* at 314 (*Daniel F. Steck v. Smith W. Brookhart,* 1925–26).

[88] *See e.g.,* S. Res. 346, 72d Cong., 2d Sess., 76 Cong. Rec. 5008 (1933); S. Res. 256, 69th Cong., 1st Sess., 67 Cong. Rec. 12633 (1926); S. Res. 211 & 212, 69th Cong., 1st Sess., 67 Cong. Rec. 10563–64 (1926); S. Res. (unnumbered), 47th Cong., 1st Sess., 13 Cong. Rec. 2047 (1992); S. Res. (unnumbered), 46th Cong., 3d Sess., 11 Cong. Rec. 1911–12 (1991).

[89] *See* 79 Cong. Rec. 14449–50 (1935) (declining payment of attorney's fees for contestant and memorialists in *Henyr v. Holt* election contest).

[90] S. Res. 247, 94th Cong., 1st Sess., 121 Cong. Rec. 39861 (1975).

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1061, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1061) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg amendment No. 1070, to prohibit the use of funds for national testing in reading and mathematics, with certain exceptions.

Coats/Gregg amendment No. 1071 (to Amendment No. 1070), to prohibit the development, planning, implementation, or administration of any national testing program in reading or mathematics unless the program is specifically authorized by Federal statute.

Specter amendment No. 1069, to express the sense of the Senate that the Attorney General has abused her discretion by failing to appoint an independent counsel on campaign finance matters and that the Attorney General should proceed to appoint such an independent counsel immediately.

Coats/Nickles amendment No. 1077, to prohibit the use of funds for research that utilizes human fetal tissue, cells, or organs that are obtained from a living or dead embryo or fetus during or after an induced abortion.

AMENDMENT NO. 1077

The PRESIDING OFFICER. Amendment No. 1077 is now pending.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, we will be resuming discussion of the amendment I offered last evening. I don't intend to repeat all that I said last evening. I do know there are a few other Senators who wish to speak on this amendment, and, hopefully, we can accomplish that in a reasonable time and then move to a vote.

It is not my intention to utilize this amendment as a means of delaying a vote on the larger appropriations bill or specifically on the amendment that we adopted last evening, increasing funding for Parkinson's research, an amendment I supported and worked together with Senator WELLSTONE and others on this effort. I was pleased the Senate adopted my amendment related to the whole area of medical research so that we can commission a study which would give us, before the next appropriations and authorization cycle, a better idea of how we can direct research funds to achieve the greatest good for the greatest number.

There are allocations currently made on the basis of who has the best lobbying effort and perhaps who has the best champion in the Congress. While I don't in any way mean to impugn the motives of anyone here who is putting their heart and soul into providing support for research on a disease that affects them or that they believe is important and critical, I do think that in the interest of the widespread number of diseases that are currently under research at NIH and other places and the Federal funds that are used for that research, having a better understanding of where we can best apply those dollars to achieve the breakthroughs that can prevent the suffering and, hopefully, provide the cures for a number of these diseases is the direction we ought to go. We adopted that amendment last evening, and I am pleased the Senate supported that.

This particular amendment is designed to address a specific issue that relates to the utilization of human fetal tissue in research in a number of neurological disease areas. There is a broader question of whether we ought to utilize human fetal tissue and put restrictions on how that is sustained as

applies to neurological research in a whole number of areas—Parkinson's, diabetes, and there are a number of other neurological traumas that this could apply to. However, this specific amendment applies only to research in Parkinson's.

I offer it because this is really the issue in terms of where we are applying specific research and increase in research dollars, and we will leave the discussion as it applies to other neurological disease research areas to the NIH reauthorization bill or a more appropriate time. But I believe it is relevant to this particular issue because we are addressing the question of Parkinson's research.

I will summarize the two arguments that I made last evening. One is that we really don't have a pressing need to utilize human fetal tissue obtained through abortions other than human fetal tissue that is obtained through spontaneous miscarriages and through ectopic pregnancies. Because we have available to us some information that indicates that there is a diminishing viability of the utilization of human fetal tissue for Parkinson's research—it hasn't proved to be the promising breakthrough that we once thought it would be—there are alternatives to the utilization of human fetal tissue, specifically cell engineering, specifically utilization of animal fetal tissue, genetic engineering, and some other alternatives.

Second, there are more promising areas of research that don't involve human fetal tissue at all, that involve brain implants, that involve a number of other research areas which I could detail, but I did last evening and I won't do that again.

More importantly, however, than the question of whether or not this is even necessary to continue significant and important human fetal tissue in Parkinson's research, more importantly and most importantly, there are ethical considerations that I believe ought to give us significant pause before we just simply allow the utilization of human fetal tissue research.

A number of moral and ethical questions have been raised, and I raised those last evening. I think Members ought to consider those, particularly those who perhaps don't have a personal concern about the utilization of fetal tissue research. It ought to be considered by them particularly since we have alternatives that allow us to address this problem without utilization of human fetal tissue for this research. If medical research becomes dependent on widespread abortion—and this is a concern because if human fetal tissue is determined to be effective in treatment, when we look at the whole widespread area of neurological research, we are talking of potentially utilization of fetal tissue of up to 20 million fetuses. That presents a wrenching dilemma for those of us, and I think that is most of us in this body, who believe that abortion ought to be rare, if not banned. For those who say it ought to be legal, safe and rare, we certainly would not be moving down a path that would allow us to limit abortions to only those that are most medically necessary.

Second, let me just say that the dilemma that is posed is that the person who is responsible for the termination of the life of the child is the very person who gives the consent for the use of fetal brain tissue from that particular child. It is not consent of the child for utilization of the tissue. The very person who volunteers to have an induced abortion gives consent for the utilization of fetal brain tissue for one who has no voice in that consent. I think that presents a real ethical and moral dilemma that each of us ought to contemplate before we cast our vote in favor of the use of human fetal tissue.

Third, I think there is a concern that we might be encouraging abortion by covering it with a veneer of compassion. ''After all, there is a benefit,'' the thinking goes. ''There is a benefit to this abortion because the product of the abortion can be used in alleviating human suffering.''

We all want to alleviate human suffering. We all want to do everything that we possibly can to find a cure for these diseases. And yet we have to be confronted with the moral and ethical dilemma of the possibility of the abortionist, the person encouraging the abortion, covering the fundamental underlying question about the life of a child by saying, ''Well, after all, we can mitigate your concerns because look at the good that it will do, the side benefit of the good that it will do.'' Ultimately that is a question that is a great question that ought to be pondered by each of us before we just simply say there is a great benefit to this fetal tissue research.

So on the narrow question of whether or not fetal tissue is necessary for significant Parkinson's research, I think we have answered the question in saying it isn't. There are alternatives available and there are many more promising areas of research that can lead us to breakthroughs in Parkinson's research.

And on the question of the moral, ethical dilemma, we can address that dilemma, particularly in this specific narrow area, by not allowing the use of human fetal tissue research with the exception that the research can go forward with fetal tissue obtained from spontaneous abortions or fetal tissue obtained from ectopic pregnancies.

So it seems to me that we have addressed this issue in a way that allows the research to go forward, utilization of alternatives other than induced abortions, on a voluntary consent basis, and in ways that will not present us with this horrible ethical and moral dilemma that I think deserves great consideration before Members vote. That is the crux of the dilemma that I have presented. I hope Members consider that carefully before they cast their votes and not simply be caught up in ''this is anti-Parkinson's, this impedes Parkinson's research, this has nothing to do with abortion, this has nothing to do with the fundamental moral questions here.''

We can address this and then save and reserve the greater debate in terms of utilization of human fetal tissue for other neurological research at a time when we are addressing that specific bill. So that is the crux of the argument, Mr. President.

I yield the floor at this particular point in hopes that we can move forward to a successful resolution of this particular issue. Mr. President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, one thing should be very clear in this discussion. This is not a debate that pits those who are pro-choice against those who are antiabortion. In fact, it is not a debate about abortion at all. The issue is whether Americans suffering from a host of dreaded diseases are going to have the benefits of the best and most ethical medical science possible.

Though the Senator has targeted his particular amendment on one particular disease, there is a broader issue that is raised and that ought to be considered, because if we accept it for this disease, it is going to be accepted obviously for the other diseases of which this process, this procedure is applicable.

Mr. President, let us review the record. And there is an extensive record because the Senate has already voted on this issue a number of times and spoken decisively in favor of ethical, controlled, scientifically valuable fetal tissue research.

In 1988, a Reagan commission, a panel of experts consisting of theologians, scientists, legal experts, ethicists, and pro-life activists studied this issue extensively and voted 18 to 3 to lift the moratorium on fetal tissue transplantation research.

In 1992, both the House and the Senate overwhelmingly approved bills to lift the moratorium. The vote in the Senate was 87 to 10. This legislation was vetoed by President Bush.

Again in 1993, the Senate voted to approve fetal tissue funding for this vital research. That vote was 93 to 4.

Each of these votes was preceded by exhaustive debate, careful consideration of all the issues and concerns associated with fetal tissue research. Each time the support for and recognition of the need for this research was overwhelming. Over the last decade, opponents of fetal tissue research have attempted to create a connection between abortion and fetal tissue testing. The use of fetal tissue in medical research cannot and should not be associated with the abortion issue. Past and

present supporters, pro-life and pro-choice alike, have clearly stated that fetal tissue research is a medical, not a moral, issue.

Many of my antiabortion colleagues, including Senator Dole and Senator THURMOND, spoke in support of fetal tissue research during the 1992 debates. They, like many others, recognized that supporting this research is the true pro-life position because it offers hope and a chance for a better life to individuals suffering from such terrible afflictions such as Parkinson's disease, Alzheimer's disease, cancer, birth defects, and spinal cord injuries.

Yesterday, we heard a number of arguments against this research. And I would like to review and respond to these arguments for the benefit of my colleagues because they are based on a misunderstanding of the facts.

First, we heard that fetal tissue research was no longer needed for the study of Parkinson's disease. Information from the Parkinson's Action Network was cited in support of these claims. I have today a letter from the Parkinson's Action Network correcting the RECORD. The letter states that fetal tissue transplant research shows tremendous promise. In fact it shows such promise that persons currently afflicted with Parkinson's are looking to the research as a likely source of major therapeutic benefit to them—if the research is not halted.

The letter further states that alternative sources of cells, such as genetically engineered cells, pig cells, and stem cells, may eliminate the need for cells from abortions to be used in the future. At the present time, however, it is vital that the research be allowed to continue so that the therapy and the alternative cell sources can be developed at the same time.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

PARKINSON'S ACTION NETWORK,
September 3, 1997.

Hon. EDWARD KENNEDY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KENNEDY: Senator Coats' remarks have cited the Parkinson's Action Network's fact sheets, but by taking them out of context twisted their message. The following is the case:

Fetal tissue transplant research shows tremendous promise (see attached memo). The research in fact shows such promise that persons currently afflicted are looking to the research as likely to be a major therapeutic benefit to them—if the research is not stopped.

The alternative sources of cells, such as genetically engineered cells, pig cells and stem cells, will prevent the need for aborted tissue to be needed in the future. At this point, however, it is vital that the research be allowed to continue, so that the therapy can be developed and the alternative cell sources developed at the same time.

There is not one reported violation of the ethical protections separating the abortion decision and the abortion procedure from the use of tissue. See GAO Report, March 1997. Thus, contrary to Senator Coats statements there is no evidence of changes in the abortion procedure in any instance at all.

Sincerely,

JOAN L. SAMUELSON, J.D.,
President.

Mr. KENNEDY. We also heard allegations that providers were altering the methods of abortion to obtain tissue suitable for research purposes, thereby putting women's health at risk.

NIH guidelines provide that ''no abortion should be scheduled or otherwise accommodated to suit the requirements of research.'' To do so would be a clear violation of the safeguards that Congress enacted into the law.

As part of its 1997 study of adherence to these and other guidelines to assure that the research was conducted ethically, the GAO contacted the NIH's Office of Protection from Research Risks as well as the institutional review boards of each of the institutions conducting fetal tissue research and found that no violations of tissue donation restrictions had been reported or detected. None.

My staff called NIH this morning to verify that no violations have been detected or reported since the GAO study was completed, and we were told that there were none.

Concern was also expressed that the success of fetal tissue therapies would create an economic link between abortion providers and the research community. Again, I point to the NIH safeguards which prohibit the purchase of fetal tissue. Since no economic incentives exist for abortion providers, it is impossible to create an economic link between providers and the research community.

This issue has been debated and debated. Each time the opponents of the research have tried to argue that fetal tissue research will somehow stimulate abortions. Each time these arguments have ignored the extent of safeguards built into the law and regulations to assure that there is no link between the decision to have an abortion and the decision to allow fetal tissue research to be conducted. Each time these arguments have been rejected by the Senate and the American public.

The preservation and enhancement of life is the foundation of this research. Fetal tissue research and transplantation are not just clinical abstractions, they are transforming the lives of Americans every day.

A 55-year-old man who suffered with Parkinson's disease for more than 20 years and had lost much of his mobility is now able to climb mountains. A 58-year-old woman suffering from the disease for 14 years used to begin her day by literally crawling to take her first dose of medication. She is now able to ski and play tennis.

The benefits of fetal tissue research are not limited to Parkinson's disease. Recent breakthroughs in the study of treatments for a host of other diseases and conditions, including diabetes, Alzheimer's disease, spinal cord injuries, blindness, Huntington's disease, cancer, birth defects, multiple sclerosis, and conditions causing intractable pain, are the direct result of fetal tissue research conducted on Parkinson's disease. If this amendment is adopted on this disease, it will be readily applied to those as well.

Any attempt to turn back the progress made in this area by placing restrictions on Parkinson's research will jeopardize further advances in the treatment of these conditions. These setbacks and delays will lead to unnecessary suffering for the millions of Americans afflicted with illnesses that are currently benefiting from Parkinson's research. Make no mistake about it, if the fetal tissue research is banned for Parkinson's disease today, it will be banned for every other disease tomorrow.

Every time this issue has been put to the Senate, it has spoken strongly in favor of ethical, scientific, promising medical research that offers hope to millions of Americans. I urge the Senate to reaffirm that commitment by rejecting the pending amendment.

Mr. President, I will take just a moment of the Senate's time to review the set of eight requirements that were established in the 1993 legislation.

First, informed consent of the donor must be obtained. Each woman must sign a written statement that she is donating fetal tissue for research without knowing who the recipient will be.

Second, the physician obtaining the tissue must make a written statement declaring that consent for the abortion was obtained prior to the consent of the donation and that the abortion was not performed solely for the purposes of obtaining the tissue.

Third, the researcher using the tissue must sign a statement acknowledging that the tissue is human tissue and that it was obtained from an induced abortion or stillbirth. He or she must also agree to inform all subsequent users or recipients of those facts.

Any recipient of transplanted tissue must sign a statement indicating that he or she is aware that the transplant tissue is human tissue and that it was obtained from an induced abortion or a stillbirth.

Each agency head must certify that copies of all signed statements will be available for audit by the Secretary of HHS.

Recipients of funding for research must agree to conduct research in accordance with applicable State laws.

HHS must submit an annual report to Congress detailing compliance with these requirements.

And the purchase of fetal tissue is prohibited and no donated tissue can be transplanted into a recipient specified by the donor.

These were guidelines developed by theological, ethical, and religious people, as well as researchers. And we have the GAO study. And I will include the relevant parts of this study that was conducted by the NIH reviewing this particular program from 1993 to 1997.

And as the results say—I am directly quoting ''Results in Brief''—''There's been no reported violations in the acquisition of human fetal tissue for use in transplantation according to NIH and our verification efforts.''

By just reviewing this report, and I will not take the additional time unless there are further questions about it, there is a very clear indication that the guidelines that have been established in the 1993 legislation have been conformed with. It does not say there have been some violations. It does not say there is an increasing number of violations. It does not say that the GAO recommends further congressional action. It says there have been no violations, none, in 1997.

Mr. President, at a time when there have been extraordinary opportunities for progress in treating Parkinson's disease and so many other diseases and conditions, and with the kind of protections that have been agreed to by ethicists, those religious and research panels investigating the utilization of this type of material, and with all of the hope and opportunity this provides to so many American families in addressing some of the most prominent ailments suffered by mankind, to try and restrict fetal tissue research in Parkinson's disease and in other areas would be a dramatic and a serious mistake and would have a very significant and, I believe, grave impact and effect on the research and the opportunity for important progress in helping to relieve the pain and anxiety associated with these various diseases.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I want to thank the Senator from Massachusetts for laying out the case as to why the Coats amendment ought to be defeated.

I also want to thank Senator PAUL WELLSTONE for working so hard on this issue. He shared with me some very important information from the Parkinson's Action Network, which also lays out the case in a very clear-cut way, by people who really know about what it is like to have this disease and how devastating it would be if the ban on fetal tissue research was put back into law.

For 8 years there was a ban on this research under the Reagan and Bush years. Finally, that ban was lifted, and we are seeing hope for many, many people all over this country. We really cannot go backward now.

I have said often on this Senate floor in relation to health issues that come before the Senate that when we act, we ought to act to improve the health of the American people. But at the minimum, Mr. President, we should do no harm. At the minimum, when we take a vote around here, we should make sure we are not hurting people.

I think the Coats amendment would definitely hurt people, a million people who have Parkinson's disease, not to mention the others who may well get it as a result of this amendment, because this amendment would stop the progress on fetal tissue research in reference to Parkinson's disease. The prohibition in this amendment eliminates medical research, which shows significant promise of treatment or prevention of this tragic disease.

Let's take a moment to talk about Parkinson's disease and the real people it affects. According to the NIH, almost 1 million people suffer from Parkinson's disease in the United States alone, with about 50,000 new cases reported each and every year. There is a myth out there that the symptoms begin appearing very late in life. That is not so. The symptoms begin fairly early in life, sometimes in the twenties, thirties, and forties. The average age of the disease is 57. I, myself, know several middle-aged mothers with children who suffer from this disease.

The hallmark symptom of Parkinson's disease is the shaking or trembling of a limb, and in the later stages, a slow shuffling walk and stooped posture, not to mention the effects on speech. I know one Parkinson's victim who actually has to crawl around his home—a proud, professional man who has to crawl around his home. The only hope he has, because he has told me this, is fetal tissue research. This man has a family. This man has grandchildren. They are watching this debate and they are praying that we will reject this amendment.

Will we deny these people the possibility of a healthier life, which may well result from fetal tissue research, which is already showing great promise, as Senator KENNEDY has said? Will we deny these people hope? Will we do harm today to these people when we have not yet found a cure for Parkinson's? I certainly hope not.

I received a letter yesterday from two medical doctors at the Parkinson's Action Network in Santa Rosa, CA. They emphasize the tremendous need to be able to continue to use fetal tissue in their fight against Parkinson's disease. Let me read from these physicians. They know what they are talking about.

> Neural cell transplantation using fetal tissue has greatly advanced our understanding of ways to replace degenerating cells in the brain. From this work, in addition, alternatives to fetal tissue may be developed. To close off arbitrarily any particular area of investigation is potentially to retard progress across a broad front by many months, perhaps many years.

They continue:

> The ban on fetal research during the 1980's was a crippling blow to progress in many areas, including Parkinson's disease, Huntington's and Lou Gehrig's disease, spinal cord injury, and diabetes.

These doctors are telling us don't go back to the eighties, don't go back to the years where we stopped this important research.

Mr. President, I will share with you the comments of Dr. Jack Lewin, a medical doctor who is executive vice president and CEO of the California Medical Association, the largest State medical association in the Nation, which has over 38,000 physicians. Dr. Lewin stated:

> Research involving the use of human fetal tissue is responsible, high-integrity research. Using human fetal tissue to find cures for or to alleviate the symptoms of diseases such as Parkinson's disease is a life-giving procedure.

Mr. President, I repeat that: ''Using human fetal tissue to find cures for or to alleviate the symptoms of diseases such as Parkinson's disease is a life-giving procedure.''

We are giving life with this procedure. Why would we vote to take away life by going back to the eighties when we had a ban on this because of politics? There is no place for that in this debate.

Dr. Lewin said that the California Medical Association promotes all legitimate research, including research involving fetal tissue. He continues:

> It is important to dispel the myth that this research promotes abortion. This is not the case. On the contrary, research involving fetal tissue promotes the healing of crippling diseases. This research shows promise and needs to be pursued.

Now, on the issue of abortion, I am going to refer to the history of this issue where in 1991 and 1992, there was legislation passed which directly confronted this ethical and moral issue which Senator COATS talked about today. He says we must confront this ethical and moral issue. He is right. We did do that. We did do that in 1991 and 1992. Let's discuss what is in place today in terms of the moral and ethical issues of abortion and fetal tissue research.

First, a woman may not be approached for consent to donate the aborted tissue until after she has made the decision to have an abortion. So, no woman can be told this prior to her decision.

Second, the donor may never be paid for donation of the tissue. It is outlawed. No one can get a single penny for donating fetal tissue.

Third, the donor may not designate who will be the recipient of the tissue, nor ever be informed of the recipient's identity.

This is not a question where, say, a daughter says, ''I will become pregnant, have an abortion and let my father regain the use of his life.'' This cannot be done.

I think what is very important to know is that if you violate this law, you could be punished by 10 years in a Federal prison. We had a report and the report came back: ''There have been no violations in the acquisition of human fetal tissue research for use in transplantation.''

So when Senator COATS talks about confronting the ethical and moral issues, those issues were confronted in 1991 and 1992, and the Research Freedom Act clearly addresses this issue.

There has been no violation at all. If all of our laws were so effective, I think we would be very proud.

Let me offer a specific example of how doctors are using fetal tissue to improve people's lives. Good Samaritan Hospital in Los Angeles was one of the first hospitals in the country to offer a new, promising surgical procedure using fetal tissue transplants. Many of the patients who received this procedure did so only after one of the most common drugs was no longer effective in helping their illness and their symptoms had worsened, some to the point where they compared their conditions to rigor mortis—in other words, total stiffness and inability to move.

Today, the vast majority of the more than 40 Parkinson's patients who have undergone the procedure at Good Samaritan have experienced moderate to substantial improvements in their condition. This is a life-giving procedure. This procedure gives life, gives movement to people. The issue of abortion is addressed in the Research Freedom Act and has been confronted and not one violation has occurred. We should be proud, all of us together.

According to Dr. Oleg Kopyov, more than 70 percent of the patients who got this transplant have shown ''statistically significant improvement'' on standard neurological tests. The other 30 percent are now taking 20 to 40 percent less medication. None of the patients' Parkinson's symptoms have worsened following neurotransplantation.

Do no harm. We should do no harm. The Coats amendment does harm, direct harm, to good Americans, and it takes away hope from a million people with Parkinson's in America. Said hospital neurosurgeon Dr. Deane Jacques:

> We are proud to be in the forefront of treatments like neurotransplantation, which clearly have enhanced patients' quality of life.

Yet another example of the tremendous effects and great potential of this research comes from Colorado. A professor at the University of Colorado Health Sciences Center, who is conducting a study using fetal tissue, described the incredible effects on one participant earlier this year. He is quoted as saying:

> We have a woman who could never walk prior to taking her first dose of drugs in the morning. Now she can walk before her first dose of drugs, and has resumed playing tennis. A typical transplant patient cuts the drug by 40 to 50 percent.

Why would we inject ourselves into this important nonpolitical health issue when, in fact, the issue of abortion has been successfully addressed in the Research Freedom Act? I cannot understand why this amendment is before us.

Mr. President, these are significant results of helping people. Why would we even consider closing the door on this promising life-giving research? We make progress in research by opening doors, not by closing doors.

I want to bring back the words of South Carolina Senator STROM THURMOND that he spoke on this Senate floor in 1992 when he urged this body to lift the ban on fetal tissue research. He said, ''We cannot afford to lose this opportunity to develop a cure.''

The Senator was speaking in reference to his daughter Julie, who has diabetes. He stated, ''As a parent of a diabetic, I have a personal appreciation for the urgent need for a cure.'' Those were Senator THURMOND's words back then.

No doubt this sentiment is shared today by the parents, siblings, and children of those suffering from serious debilitating diseases such as Parkinson's disease.

Senator COATS said we are only stopping the fetal tissue research for Parkinson's disease. Yes, that is on this bill. What is the next one going to be? Alzheimer's? What is the next one going to be? It is not a good precedent. We took care of this issue. Anti-choice politics should not get into this debate. This is not about choice. It is about health. We addressed the issue. Let's move on.

I am going to quote again from Senator THURMOND, whose words 5 years ago captured the essence of the issue before us today, when he stated:

> This is not a debate about abortion. This is a debate about allowing federally sponsored research that will serve humanity and may save thousands of lives. Passage of this bill [to allow fetal tissue research] should improve the quality of life for many people with devastating diseases and disabilities.

Supporters of this amendment may argue that fetal tissue research could still continue if this amendment were passed, as the ban would not apply to tissue obtained from spontaneous abortions or ectopic pregnancies.

But, Mr. President, we have heard this argument before. It remains as weak as ever. Doctors have addressed this issue in earlier debates, and have stated that tissue from spontaneous miscarriages is often diseased and is difficult to collect in a safe and timely fashion to preserve the viability of the cells. The same applies to ectopic pregnancies, which produce tissue that is likely to be non-viable due to the lack of blood supply.

So, really, we addressed this issue before. There has not been one violation. A woman may not be approached for consent to donate the aborted tissue until after she has made the decision to make the abortion. The donor may never be paid for donation of tissue, and the donor may not designate the recipient of the tissue. A GAO study reports not one violation. And if there is, someone is going to jail for 10 years. The issue has been addressed.

Mr. President, doctors have made significant progress toward understanding and treating serious debilitating diseases, such as Parkinson's disease, through research involving fetal tissue. But we are not there yet. I know that my phone has been ringing off the hook from people who have Parkinson's disease. Some are pro-choice. Some are anti-choice. They know that issue was addressed in 1991 and 1992. They know that the only hope they have is for the doors of research to continue to be open.

I am so pleased that we will be spending more on Parkinson's disease. I want to see us double the research at NIH. And I have joined with Senators MACK, SPECTER, DURBIN, and others to make that a reality.

The enemies we face are right here at home. We fear that a loved one will get cancer. We fear that a loved one will get AIDS. We fear that a loved one will fall ill. We fear that we are going to lose our parents to Alzheimer's. These are legitimate fears, and these are legitimate areas for the Federal Government to be involved in.

I will say this. When Senator COATS says we have to confront ethical and moral issues, he is right. But what I don't understand is why he isn't proud of the Research Freedom Act, which does, indeed, protect against people saying, ''Well, I am going to get an abortion because I can get money for this fetal tissue,'' when, in fact, that has never happened. That cannot happen. And it will not happen as long as we keep the Research Freedom Act in place. And there is not one Member of this Senate that I know of who isn't a strong supporter of that.

So, Mr. President, today we have a million Americans with Parkinson's watching the debate, and we have millions of other Americans with other diseases and families who love and adore these family members hoping that we will not take a step backward. I have faith that we will not do so.

I hope that we will vote down the Coats amendment. I hope we will continue the progress. I hope we will all continue to support the Research Freedom Act so that we can feel we did everything we could to ensure that this research is ethical.

Thank you very much.

Mr. President, I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, let me make two points. One is that I don't need to be reminded by the Senator from California about the ravaging effects of Parkinson's disease, having watched my grandfather suffer and die from Parkinson's, and having watched my father suffer and die from complications from Parkinson's. I am well aware of the debilitating nature of Parkinson's disease. I think many of us have had personal experiences with that. I have not mentioned that before. But I think the implication is that if one truly understood Parkinson's, you couldn't begin to support the Coats amendment. I think I truly understand Parkinson's and what it does and how it affects an individual, how it affects family and loved ones. There is the

very real possibility that it is genetically induced and that I may go through the same experience.

Second, let me just state for those who suggest that there is no hope for the millions of Parkinson's sufferers, there is great hope for the millions of Parkinson's sufferers. There is hope because, No. 1, fetal tissue research can continue if the Coats amendment is adopted. I do not deny research utilizing human fetal tissue through this amendment. I simply say that that fetal tissue cannot be obtained through induced abortions. It can be obtained through spontaneous abortions, miscarriages, or ectopic pregnancies.

But, second, there is hope because there are so many viable, wonderful alternatives that are now being researched which offer far more promise than the fetal tissue research. If you want to continue fetal research—and it probably should be continued—that fetal tissue can be obtained through sources other than human fetal tissue. In fact, it is much more promising now using animal tissue. There are a number of alternatives being explored, both through the use of cell engineering techniques, genetic engineering, and other developing cell lines.

There are also alternatives outside tissue research that hold some promise. Perhaps the recent discovery of a gene that has an effect on Parkinson's, which perhaps is the cause of Parkinson's, albeit for a percentage of people and not for all the people, offer hope. So there is great hope. There is great promise in Parkinson's research. And nothing in this amendment denies that hope, denies that promise.

So I think Members need to understand when they are voting for the Coats amendment that it is a way to preserve and continue Parkinson's research. But it is done so in a way that avoids what I think is a potential significant, ethical, and moral dilemma in terms of utilizing human fetal issue without the consent of the person giving the tissue.

The very person who makes the decision to terminate that life is not the person who gives the consent to utilization of the tissue. That is a moral and ethical dilemma that I think is important for us to explore.

So for those two reasons, I think the Coats amendment is more than a reasonable amendment. I hope my colleagues will support it.

With that, I yield the floor.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, before the debate goes any further, I ask unanimous consent that a vote occur on or in relation to the pending amendment at 12 noon today, and that the time between now and noon be equally divided in the usual form with no amendments in order prior to the 12 noon vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I yield myself such time as I may consume on this issue.

Mr. President, this amendment is an attempt to revisit an issue that has been settled and should remain settled. It attempts to reverse a decision supported by both pro-choice and pro-life Senators alike. The last time this body voted on this issue, the vote was 93 to 4.

The ban on fetal tissue research was lifted 4 years ago. Since that time, the NIH has awarded over $23 million in grants for research involving the study, analysis, and use of fetal tissue. This research holds the potential to provide tremendous advances in the treatment of debilitating conditions such as Parkinson's, diabetes, Alzheimer's, Huntington's, epilepsy, blindness, multiple sclerosis, leukemia, and a host of other illnesses.

The issue of fetal tissue research has been debated, as I said, and legislated by the Congress. The Senate voted 93 to 4 that the benefits of this research far outweigh the unsubstantiated fears and concerns that it would lead to increases in abortions.

The bill enacted in 1993 established rigorous standards to safeguard against any potential that the needs of researchers would affect individual decisions about abortion. Those safeguards are in place and they are working. In 1997, a GAO study of the safeguards reports that ''the act's documentation requirements were met'' and that there have been no reported violations in the acquisition of human fetal tissue for use in transplantation.''

These safeguards were not written specifically to address research involving Parkinson's disease, but all research using fetal tissue. There is no need to revisit this debate as it relates to research on Parkinson's. The research being conducted today with fetal tissue is also providing new techniques such as specialized cell lines and genetically engineered cells. In fact, the development of these new technologies may well eliminate the need for using fetal tissue for research purposes in the future.

Mr. President, yesterday I received a letter from Joan Samuelson, president of the Parkinson's Action Network. It was addressed to Senator KENNEDY and others. I would like to read for the RECORD what she had to say. Her letter starts:

For decades, despite the eight-year ban on federal support for the research, significant progress has been made in the therapeutic benefit of cell transplants, including the following:

Major progress has been made in confirming the new neural cell transplant process works. In the last two years, post-mortem review of transplanted cells has proven that the transplanted cells can take hold in the host brain and produce dopamine, thereby replacing the dopamine in the body.

Major progress has been made in developing an alternative source of tissue for transplantation, so that when a therapy is available to the public, it will not be dependent on elective abortions. Several alternatives are in development, including use of porcine (pig) cells, stem cells and genetically engineered cells.

The research is also providing valuable insights into the fundamental issues of Parkinson's cause. For example, the transplanted cells do not appear to be affected by the underlying disease process: While the original cells continue to degenerate, the transplanted ones do not continue to degenerate. This fact is giving essential clues into the nature of the cause and disease process.

The transplanted cells are proving more and more effective at treating Parkinson's symptoms. A few transplant patients are now off medication and symptom-free—a dramatic change.

Mr. President, I ask unanimous consent that the entire text of the Samuelson letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PARKINSON'S ACTION NETWORK,
Washington, DC, September 3, 1997.

Hon. EDWARD KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: For decades, despite the eight-year ban on federal support for the research, significant progress has been made in the therapeutic benefit of cell transplants, including the following:

Major progress has been made in confirming the neural cell transplant process works. In the last two years, post-mortem review of transplanted cells has proven that the transplanted cells can take hold in the host brain and produce dopamine.

Major progress has been made in developing an alternative source of tissue for transplantation, so that when a therapy is available to the public, it will not be dependent on elective abortions. Several alternatives are in development, including use of porcine (pig) cells, stem cells and genetically engineered cells.

The research is also providing valuable insights into the fundamental issues of Parkinson's cause. For example, the transplanted cells do not appear to be affected by the underlying disease process: while the original cells continue to degenerate, the transplanted ones do not. This fact is giving essential clues into the nature of the cause and disease process.

The transplanted cells are proving more and more effective at treating Parkinson's symptoms. A few transplant patients are now off medication and symptom free—a dramatic change. Although the first clinical trials are still ongoing, initial results indicate that even in these initial experimental stages the typical patient is able to reduce medication dramatically—thereby also reducing the related side effects—while also significantly lessening Parkinson's symptoms.

The Parkinson's research has created a research base which is now being used for important research using neural cell transplantation to treat many other diseases and disorders including diabetes, spinal cord injury, blindness, Huntington's disease, intractable pain, Alzheimer's disease, cancer, birth defects and Multiple Sclerosis.

Sincerely,

JOAN I. SAMUELSON, J.D.,
President.

Mr. HARKIN. Mr. President, the letter points out that we are making progress, that we are discovering new things. Now is not the time to revisit

this issue. This issue has been settled and I believe we ought to leave it alone. As we have said, the studies have shown that the safeguards we put in place are working. No violations have been encountered, and I believe the best course of action is to stay the course that we have had since 1993, and, of course, I think at the appropriate time there will be a motion made to table the Coats amendment. And I urge all Senators to support that motion to table and to continue what we have been doing since 1993 in providing for fetal tissue research but with adequate safeguards to ensure that unintended consequences do not happen because of this research.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BURNS). Without objection, it is so ordered.

Mr. NICKLES. Mr. President, I ask the Senator from Idaho for such time as I need.

Mr. CRAIG. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. Mr. President, I rise in support of the amendment of the Senator from Indiana [Mr. COATS] to prohibit the use of Federal money to conduct research using fetal tissue on Parkinson's disease, fetal tissue that is produced from elective abortion. The Coats amendment exempts spontaneous abortions, exempts ectopic pregnancies. But really the thrust of his amendment is that we do not want to turn abortion clinics into mills producing tissue that is used for research.

I support his amendment. I do think it is immoral to use fetal tissue from elective abortions for medical research. I think occasionally we have to make moral statements. Do we really want to allow abortion clinics to harvest material to be used for research in whatever disease? In this case it is Parkinson's disease. Do we really want that to happen in this country?

We had a prohibition on it for years. It was not done for years. Now some people think that maybe it would be a good idea. Tissue can be harvested, can be used if the abortion is spontaneous, but not in the case of elective abortions. Do we want to have a situation where an individual goes in and kills a human being, although not yet born, maybe up into the eighth month of pregnancy, kill that unborn human being and use that human being's cells for medical research? I do not think so, and I do not think we should fund it.

The Senator from Indiana should be complimented for his amendment. I wish that this amendment was not necessary. I heard yesterday that NIH or someone has alluded to the fact that NIH, had no objections to the amendment.

So I am maybe a little bit surprised that others are opposing this amendment as aggressively as they are. I urge my colleagues to support the Coats amendment. I think it is a good amendment. I regret that it is needed, but it is needed. I think it is important. I do not think we as a country want to have a national policy allowing abortion mills to kill unborn children and use their body parts for medical research. That is a serious issue. That is what we are voting on. So I urge my colleagues to vote in favor of the Coats amendment.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, I ask unanimous consent to speak on the bill and not have the time charged to either side on this amendment.

Mr. COATS. Mr. President, I yield to the Senator from Missouri such time as he requires.

Mr. BOND. Mr. President, I thank the acting manager of the bill.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thought, as children are going back to school across the country and in our States, we ought to take a few moments to think about the education they are receiving and how we as parents, not just in our role as legislators, can make a real difference in how our children develop.

The truth is, we have come to know the foundations of learning begin long before a child ever gets to school. Babies from birth to age 3 years old are learning fundamental language skills at this time. Research tells us that 50 percent of a child's mature learning intelligence develops by the time that child is 3 years old. We can play a very large role in determining how successful that learning function is. We do this by reading to children even before they are old enough to hold a book. We do this by talking to them. We do this by interacting with them.

Over the August recess I traveled around the State of Missouri, focusing on the issue of literacy and working with young children who were in preschool classes or, in Missouri, in our Parents as Teachers Program. I found it to be a very exciting, a very interesting, and a rewarding experience, and one that I hope we can show—all of us, as colleagues, as others who are concerned—is a very rewarding activity for the parents.

We have always thought that early childhood was a key learning time. That is common sense. But now we have seen it validated by science. The development of children's learning skills depends upon the child's exposure to language in the earliest years. What we do to encourage and stimulate literacy, reading ability, communicating ability, in very young children, is going to provide the basis of their success later in life.

When you come to think about it, reading is the basic skill. Learning to understand, to read and communicate is absolutely essential, particularly as we live in a complex society. Most of us think about reading and learning as part of the economic process of getting a job. I can tell you that my experiences in job training in the years when I was Governor reemphasized the importance of that. In my second term as Governor we had an on-the-job training program for industries expanding in Missouri and creating new jobs. I will never forget visiting one facility where they were installing sophisticated computer-assisted manufacturing systems. They were very complicated. You had to understand a lot of science to do the job well. And these jobs were extremely high-paying jobs. As a matter of fact, one of the workers in one of those jobs, working a 2,000-hour year, would earn more than the Governor of Missouri would have at that time. The science had all developed since I last opened a science textbook in college.

They had a 6-week training program for these workers. Four of the weeks were devoted to teaching these workers to read, because so many of them had not learned the basic reading and understanding skills in school. The prize there was demonstrable; the prize was visible. If you could read and understand, you could operate one of these machines and earn more than the Governor of Missouri was earning. And there is no question, as I talked to employers around the State, they are looking for and begging for workers. But the workers have to be able to read and understand complicated instructions, because the tasks that the workers will be called on to perform, now and in the years ahead, are rapidly changing. They are changing with technology. And the people who are doing the work have to learn to read and understand the changed instructions.

So, reading is a fundamental skill, an absolutely essential skill to get ahead economically. But we ought not to focus ourselves just on the economic side. To be an informed citizen, to participate in our democratic form of government, requires that people read, be able to understand all the messages that are coming to them. Reading provides the basis for communicating and getting along in the world in many other ways—in social activities, in community activities. So, literacy really is the fundamental basis, the foundation for knowledge and for development of well-informed, well-attuned children in our communities, in our States and in our Nation.

Former First Lady Barbara Bush has made literacy her top priority, and I take my hat off to her. I think, as I see more and more of the challenges we face in this country, the more I understand that Mrs. Bush is right. Where people do not have the fundamental reading skills, they have significant problems.

One of the reasons I have been closely associated with this literacy project is following up on the Parents as Teachers program we have in Missouri. Parents as Teachers begins by providing assistance, on a voluntary basis, to parents of children from birth to 3 years old. We have found that parents who participate in this program with their children—No. 1, are able to avoid many of the serious learning problems that affect children today and require that they be put in remedial or special education; but we are also finding that in every measure of scientific testing, these children are scoring higher than their peers. When I talk to kindergarten teachers and elementary schoolteachers and administrators, they can see the difference in these children who have worked in the program where literacy is emphasized, where parents reading to their children is emphasized.

I spent the month of August trying to encourage more and more families in Missouri—parents, grandparents, aunts, uncles, caregivers—to read to their children to show that it is fun, but also to tell them that it is vitally important.

Also, we want to expand—and this bill does provide expansion of the opportunities for more States to participate in the Parents as Teachers Program. At my request, the chairman of the committee and the ranking member included $30 million to expand Parents as Teachers programs to other States around the country and to improve on the program. Already, 47 States participate, to some degree, in the program.

Early childhood learning and development is important, and we can do a much better job. The Parents as Teachers Program is one that has had tremendous success. Mr. President, 150,000 Missouri families voluntarily participate in that program every year, and if you want to know if the program works, I can refer you to any one of those 150,000 families, because they see it is working, they know it is working, and, Mr. President, this bill provides more resources to help start these programs in every school district in the country.

I hope there will be a time when we find that families, wherever they are, who want help developing the child's learning skills will be able to get the kind of assistance that is now available in Missouri. It can make a difference, and it will make a difference in our children's education, their preparation for the work force but, most of all, their preparation to take the role in society as responsible adults, as responsible parents themselves.

I urge my colleagues to join with me in supporting and keeping in the money for early childhood development. I hope to work with Senator KERRY and others to provide authorizing legislation in this session to expand on the opportunities to support early childhood development. Government programs are fine, but it all comes down to the responsibility of the parents, and that responsibility is very easy to outline, because the starting point is reading to children, relating to them and showing them the excitement and the wonders that are opened through reading of books and other materials.

I thank the Chair, and I yield the floor.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum. I beg your pardon. I withdraw that.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I yield myself up to 10 minutes off whatever time remains on this side.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

AMENDMENT NO. 1071 TO AMENDMENT NO. 1070

Mr. BINGAMAN. Mr. President, this morning, the appropriations subcommittee is having a hearing, as I understand it, to resolve the question about testing. The President has proposed a reading test that would be voluntarily made available to States and local school districts for fourth graders where the school wants to provide testing in reading, and one for eighth graders in mathematics.

There has been some controversy about this. Senator COATS from Indiana has proposed an amendment which would—the Coats amendment and the Gregg amendment together, as I understand it—essentially prohibit the use of funds to go forward with the development of these tests. I believe this would be a very grave mistake for this Congress to make if we were to prohibit the Department of Education from going forward with the development of these tests. I think the President's support on this issue has been strong. The White House has indicated that they would veto the legislation if, in fact, it did contain a prohibition on the use of funds to go ahead and develop these tests.

As I see it, the tests that the President has proposed and the Department of Education would like to develop and make available to school districts and to States is designed to allow parents, to empower parents, to understand the educational performance and the achievement level of their own children and how well the school that their child is attending is doing in preparing their child for a career later on.

The Coats amendment, as I said, would prohibit the development of the tests, and I think that would be a very serious mistake.

The problem we have today, frankly, is that every State that gives tests—and all of our States do give tests—every State that gives tests measures by a different standard how well their students are doing. Accordingly, you have some States where most all the students do reasonably well on the test that is provided, and there is a general perception that they are going to be fine. The general trend is that everybody thinks that although the school system nationally, the educational system nationwide, is in serious difficulty, they believe that their own child is getting a good education. It just doesn't add up. Every individual child in our country cannot be getting a good education and still have the vast majority getting a less than quality education.

What we need to do is to have a system where there is agreement as to what the standard is, there is agreement as to what the test results demonstrate, and then parents can make an intelligent decision about how their child is doing relative to other children, how their child is doing, how their school that their child attends is doing relative to other schools in that same district and relative to other schools in the State or in the Nation.

We have today what is called the National Assessment for Educational Progress test, and that is a test that in 43 States tens of thousands of students participate in on a voluntary basis. This test has been in place now for 25 years. The problem, of course, is that it is not available to most students. But clearly, communities, States, and school districts recognize that it is a good, objective assessment of how the students in the schools are doing.

What we are trying to do through the development of these new tests is to take the model that the NAEP, the National Assessment for Educational Progress, has developed and, essentially, have a test that then is available for each student in each school around the country where they want to have that test administered.

I believe this is important because I believe that improvement in education in the country is going to have to be driven by concern of parents. They are the ones who need to understand the quality of the education that their children are receiving. Without something like this test available, you are not going to have the level of concern by parents that is necessary in order to ensure and require the improvements in education that I believe are needed.

Let me just indicate that there is nothing that complicated about the tests that they are talking about giving here. The reading test is a simple one. One example is they essentially go through and ask fourth graders to describe Charlotte to a friend after they read a passage from the well-known book ''Charlotte's Web.'' That is a commonsense kind of a test that all of us would like our children to be able to pass. It is the kind of test which is appropriate to make available to all of our schools.

The same thing in math. The test there is a straightforward test. There is nothing convoluted or complicated about it. It tests basic math skills for eighth graders, and, goodness knows, everybody in this country, every parent I talked to believes their child should be prepared with a basic understanding of math by the time they complete the eighth grade.

Let me say, the business community strongly supports the President's initiative to have these tests available to States and school districts. There has been a call, a repeated call and a consistent call, by the business community to have more objective assessment going on in our schools so that we don't have so much rhetoric, but we have actual information, good solid information, about how well our students are doing.

That is exactly what employers require before they hire a person. They give them those objective tests to determine whether they have the basic skills in reading and in mathematics so that they can become productive employees. For us not to make those same kind of objective tests available in the schools before they get out into the workplace I think would be a serious mistake.

Not only does the business community support this, the public supports it. In the most recent national poll, 77 percent of the public that was questioned supported establishing national standards; 67 percent specifically supported using national tests, such as were described and supported by the President and the Department of Education.

I know that we have testimony being presented this morning. Secretary Riley is making the case before the Appropriations Committee. I hope very much that he will be persuasive to the members of that committee and that we can go forward with the funding of these tests as the administration intends.

I do think this is an issue that has great long-term consequences for our country. It would be a serious mistake for us to head this off. We already have a whole number of States—I see the distinguished chairman of the Appropriations Committee on the floor here right now. His State of Alaska has chosen to participate voluntarily in the use of these tests when they are made available. The superintendent of public instruction in my State of New Mexico has indicated his desire that we should also participate at some future date in the use of these tests. There are many States that are anxious to participate. There are many large school districts in our larger cities that have indicated the same thing.

We need to keep faith with them, go forward and develop these tests, make the tests available. If they want to use them, so much the better, that is their choice. But it would be a serious mistake for this Congress to try to make that decision for the States, make that decision for the local school districts by denying the Department of Education the funds necessary to go ahead and develop these tests.

So I hope very much that, once the appropriations subcommittee concludes its hearing on the issue, we can proceed to dispose of this matter. I hope very much that the COATS amendment and the GREGG amendment, which is a second-degree amendment, as I understand it, or a perfecting amendment, that those amendments can be disposed of and we can proceed to pass this legislation.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I thank my colleagues for the courtesy. My understanding is we have a vote at noon; is that correct?

The PRESIDING OFFICER. The Chair wishes to advise the Senator that the time is under the control of the Senator from Alaska.

Mr. WELLSTONE. Might I inquire, do we have a vote scheduled at noon?

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 1077

Mr. WELLSTONE. I thank my colleagues, and especially Senator COATS, for their courtesy. I was not able to come to the floor earlier, and sometimes if we feel strongly about an issue we will have a chance to speak before the vote. I thank him, and I thank Senator STEVENS and others as well.

I do not know quite where to start. Last night we passed an amendment, and this was work I was fortunate enough to get a chance to do with Senator MCCAIN, and I think we had 97 votes to expand funding for Parkinson's disease. It was an enormous victory. I believe that kind of strong vote will serve us very well in conference committee, and I believe finally we will be able to get some funding.

There has been so little funding. It has not been fair, and people who have been struggling with this disease have been here for several years now. They have become their own advocates. The only reason we had such a strong vote last night was because of their work.

My colleague, Senator COATS, was gracious enough to raise his concern through this amendment separately from that vote. He is someone here in the Senate that I believe in. I think he speaks for what he thinks is right. This amendment he introduces in very good faith.

I will be the opposite of shrill in my opposition. I think the amendment is profoundly mistaken. We have gone through this whole debate about fetal tissue research, and I again want to make it clear that not only have we not seen one instance of abuse, not one example, but we really have very, very stringent and clear protections. A woman may not be approached for consent to donate aborted tissue. The donor may not be paid for donation of the tissue. The donor may not designate who will be the recipient of the tissue. Violations of these restrictions are a Federal felony, punishable by 10 years in Federal prison.

I say all that because I want to make it clear how strict the guidelines are. I also want to make it clear that I do not think this issue is really about using the labels pro-choice or pro-life, but it has to do with another question, which is whether or not people who are struggling with the disease are going to be able to look to a day where there will be a cure. If this amendment passes, we are essentially wiping out one very promising avenue of research. I think that would be a very crucial thing to do. That is certainly not the intention of the amendment.

I say to my colleagues, because I have been active in this work dealing with Parkinson's since I came to the Senate, I know something about it, having had two parents who struggled with Parkinson's. I know something about it, having spent a great deal of time with people in the Parkinson's community, that given the strict guidelines and given the fact that we do not see examples of abuse, and given the fact that this really is not about pro-choice and pro-life, and also given the fact that if this kind of amendment is going to be raised it ought not to be focused on one disease, I just hope that my colleagues will oppose this amendment. I think it is profoundly mistaken.

Now, Mr. President, just forget all of the statistics, except to say, and I think my colleagues will believe me, that if you talk to people in the medical research community they will tell you that fetal tissue transplant research is one of the very promising approaches. I do not think we want to ''defund'' that. We do not want to be in a position of, on the one hand, finding resources for research, and then essentially wiping out one of the very important modes of research to find a cure for the disease. We do not want to do that. It really undercuts part of the very important vote that took place last night.

Maybe the best way for me to summarize my view, because we will vote in just a few minutes, is to talk about a woman that some of you have come to know. Her name is Joan Samuelson. I have not asked for permission to do this, but Joan has been so visible and so vocal I do not think she will object. I first met her a number of years ago when she was testifying before our committee, the Labor and Human Resources Committee. I think she was speaking about the need to have at least a little bit more by way of resources for research, but I think she

was talking about, if my memory serves me correctly, about this fetal tissue research.

What I remember was I kept thinking about my parents. My father was almost 60 when he found out he had Parkinson's and he lived to be 84, though at the very end I will tell you, if you do not know this disease, he was so alert. He was a brilliant man. I am not objective, he was my father. He spoke 10 languages fluently but it did not help. He spoke 10 languages fluently, but because of Parkinson's he could not speak. He could not walk. And really the truth of the matter is he intensely wanted to die. That is exactly what he indicated to me.

When Joan Samuelson testified, I kept thinking, gee, she is in her thirties. What is going to be her future? If you are lucky, this disease runs a slow progression, but you never know. You do not want to find out you have Parkinson's when you are in your thirties. By the way, it is a myth that this is a disease that only afflicts the elderly.

When Joan Samuelson testified, more than anything what she was saying is, ''Look, for me and many others, time is not neutral. How can you say to me that you are only willing to invest about $30 per person for the 1 million of us who struggle with Parkinson's? How can you look at me in the eye and say that? This is my life or whether I will have a life.''

The reason I raise this is I remember hearing her testify and thinking about my parents and sort of just then starting to have tears in my own eyes because I was thinking I don't want someone like Joan Samuelson to get to the place where my dad did. I don't want that to happen to her.

Now, I am not a doctor. I cannot guarantee there will be a cure to this disease tomorrow. But when I spoke to Joan Samuelson two nights ago, she is out in California, she said to me, ''The way I look at this debate on fetal tissue research is this is the particular research that I think could very well lead to a cure for me.'' That is the point. Please, everybody, that is the point.

Whatever your position is on the general question of pro-choice, pro-life, that is not what this debate is about. To someone like Joan Samuelson, this is one avenue of research that could very well lead to a cure for this disease. That is of central importance to her. That is of central importance to the lives of many other people struggling with Parkinson's. I think that is what this vote is about.

So, Mr. President, I urge my colleagues to please vote against this amendment. I feel like I have to, in good faith, conclude by saying, even though I hope there will be a strong vote against this amendment, one more time I want to make it crystal clear that Senator COATS is doing what he thinks is right. Senator COATS has supported this effort to expand the funding for Parkinson's. Senator COATS knows this disease all too well. I believe his father had Parkinson's. Senator COATS, when he does something on the floor of the Senate does it because he believes in it. He does it because he thinks it is the right thing.

I deeply appreciate the support he has given Senator MCCAIN and myself on our efforts, but I think this amendment is a mistake. Actually, I want to say I know this amendment is a mistake, because I really believe it is all about someone like Joan Samuelson. We ought not to vote for the Mo Udall Parkinson's Research Act, the amendment last night introduced by Senator MCCAIN and myself, and then turn around and essentially defund one of the important avenues of research that potentially could lead to a cure for this disease. I think that would be an injustice to Joan Samuelson and many other women and men who struggle with this disease. I hope my colleagues will vote against this amendment.

I yield the floor.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call.

Mr. STEVENS. I ask unanimous consent that the call of the quorum be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a second? There is a sufficient second.

The yeas and nays were ordered.

Mr. STEVENS. That vote will occur at noon?

The PRESIDING OFFICER. That is correct.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COATS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COATS. Mr. President, just in summarizing before we vote at 12 o'clock on the Coats amendment, let me just, for Members' information, clarify things here.

This amendment does not prohibit all Federal funding for fetal tissue research. Fetal tissue research can go forward. It allows fetal tissue research to go forward with tissue obtained from ectopic pregnancies and spontaneous abortions. It does prohibit Federal funds from being used for research on fetal tissue obtained by induced abortions only.

We encourage research in the most promising areas of Parkinson's disease with animal tissue transplants, gene-based therapy, deep-brain stimulation.

So this applies not to diabetes research, not to other neurological research—just to this. Other alternatives exist. Even fetal tissue could go forward.

I hope our colleagues will understand the practical nature of this and the ethical and moral considerations of doing this, and I urge a vote in support of my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Indiana. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Rhode Island [Mr. CHAFEE] are necessarily absent.

The PRESIDING OFFICER (Mr. ALLARD). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 38, nays 60, as follows:

[Rollcall Vote No. 215 Leg.]

YEAS—38

Abraham	Enzi	Inhofe
Allard	Faircloth	Kempthorne
Ashcroft	Frist	Kyl
Bennett	Gorton	Lott
Bond	Gramm	Nickles
Brownback	Grams	Roberts
Burns	Grassley	Santorum
Coats	Gregg	Sessions
Coverdell	Hagel	Shelby
Craig	Hatch	Smith (NH)
D'Amato	Helms	Thomas
DeWine	Hutchinson	Thompson
Domenici	Hutchison	

NAYS—60

Akaka	Ford	McConnell
Baucus	Glenn	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Harkin	Moynihan
Boxer	Hollings	Murray
Breaux	Inouye	Reed
Bryan	Jeffords	Reid
Bumpers	Johnson	Robb
Byrd	Kennedy	Rockefeller
Campbell	Kerrey	Roth
Cleland	Kerry	Sarbanes
Cochran	Kohl	Smith (OR)
Collins	Landrieu	Snowe
Conrad	Lautenberg	Specter
Daschle	Leahy	Stevens
Dodd	Levin	Thurmond
Dorgan	Lieberman	Torricelli
Durbin	Lugar	Warner
Feingold	Mack	Wellstone
Feinstein	McCain	Wyden

NOT VOTING—2

Chafee	Murkowski

The amendment (No. 1077) was rejected.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I have an amendment which I would like to submit on this bill, but I would ask unanimous consent that I might be given an opportunity to speak to up to 10 minutes as if in morning business on a subject of some import dealing with the terrorist action today in Jerusalem.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator from New York is recognized.

TERRORISM IN ISRAEL

Mr. D'AMATO. Mr. President, once again, we have seen the ugly, undeniably brutal, horrific actions of terrorism. We have seen the destructive impact of it in Jerusalem so vividly put forth over the TV screens, but it goes well beyond. We are told that 6 people died, over 150 have been injured, and obviously our sympathy goes out to them and to their families and to the people of that region who are held captive by these kinds of terrorist attacks. This is the work of Hamas, the Hamas who are given sanctuary, who operate out of the territories under the direct control of Yasser Arafat.

Now, make no mistake about it: The responsibility for this terrorist act and the previous bombings lies with Mr. Arafat. He, Mr. President, has the power to deter these murderers but does nothing. Indeed, he gives them sanctuary. He gives them sustenance. He gives them comfort.

Let me illustrate by way of this picture. It is said that a picture is worth a thousand words, and in this case I think even more so. The New York Times, Thursday, August 21, and here we see Mr. Arafat greeted by a leader of the Hamas during a meeting in Gaza: ''Defying Israel, Arafat embraces Islamic militants.''

You cannot have it both ways. You cannot say, on the one hand, that we are the instrumentality of peace, that we want peace, we are working for peace, and on the other hand be embracing the leaders of the terrorist organizations that are sworn to destroy Israel, the Jewish people and any prospects for peace.

That is indefensible. And so while there are those who claim that this is an internal security problem for Israel, I believe it is quite clear, given the responsibilities and given the power and given the economic wherewithal that we have provided, the United States, to Yasser Arafat, whose police force has failed, whose security services have, if anything, given sanctuary and protection to Hamas, it is about time we held him accountable for these acts. Instead of providing the security and loaning himself to the peace process, he embraces these murderers as we see so clearly. He coddles them, he provides them with sanctuary.

Mr. President, terrorism will not end if this is permitted.

I believe, and I have said before—and I see my colleague in the Chamber—that it may come time—and the Senator from Connecticut [Mr. LIEBERMAN] has raised this issue—for this country to look very closely at the moneys, the hundreds of millions of dollars annually that we send to Mr. Arafat under the umbrella, the cloak, of peace.

When those dollars are not being used to provide the kind of security to bring about a peace process but are aiding and abetting, and, indeed, we have him embracing terrorist leaders, I think we have to at the very least look at whether this should continue. I believe that we have an obligation to speak up and say, we hold you, Mr. Arafat, responsible, and it is time to condemn him publicly for the carnage and the destruction of human life that has taken place today and in the past.

Mr. President, I see my friends and colleagues, the Senators from Connecticut and New Jersey, in the Chamber, and I know that they feel strongly about this issue.

I yield my remaining time to the Senator from Connecticut and the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank my friend and colleague from New York for yielding and for his statement.

Mr. President, as a result of a terrorist act, blood has been spilled in the streets of Israel as its citizens go about the most normal day-to-day tasks, walking, shopping. Lives again have been lost to the terrorist hand. It is a very sad and dispiriting moment, not just, of course, for those who have suffered in this terrorist attack and for the families and friends who pray now that the lives of the wounded will be saved. It is also a sad and dispiriting day for all of us who hope for the continuation of the peace process in the Middle East, begun in Oslo, ratified at a historic, dramatic, hopeful signing on the lawn of the White House on September 13, 1993 by the late Prime Minister Rabin and Chairman Arafat. The agreement, the understanding, the exchange made in the declaration of principles in the Oslo accord was complicated in one sense, but simple in another. It was an exchange in which the Israeli Government would yield land in recognition of a Palestinian self-governing authority in exchange for the Palestinians—and particularly their eventually elected leadership, Chairman Arafat and others—giving security to the people of Israel; freedom from fear of the kind of terrorist acts that have been committed again today in Israel.

Mr. President, I know the Prime Minister of Israel, Benjamin Netanyahu, is controversial in many areas of this country, and there are different acts that he has carried out as a leader that some challenge and question. But it seems to me, if you look at the agreement made in the Oslo accords and you look at what was required of Israel, Prime Minister Netanyahu, since he has been Prime Minister, has kept those promises made by Prime Minister Rabin. The same cannot be said of Chairman Arafat.

It is not just, although it is significant, the failure, as promised in the Oslo accord, to remove from the Palestinian Charter these clauses which threaten the destruction of the State of Israel. It is not just, though of course it is tragic and painful, the terrorist acts that continue. But it is the tone, it is the context of what is happening. The Israeli intelligence gathers evidence, presents it to Mr. Arafat to show him, a month or so ago, that the person he has appointed as the chief of the Palestinian Authority police has been involved in planning terrorist acts. How would we feel if we had evidence from intelligence showing that the minister of defense of Russia, with whom we were negotiating an arms control agreement, had been involved in planning terrorist acts against the United States? The dreadful moment, after the bombing in Israel, in Jerusalem, a few months ago, Chairman Arafat, instead of taking action to reassure the fear of average Israelis about their security, holds a conference with Hamas and other terrorist groups and embraces and kisses one of the leaders of that group. Again, the chief of police of the Palestinian Authority at one point declares with some pride that more than 100 members of Hamas are members of the Palestinian Authority police.

The effect of these actions leading, again, to this tragic terrorist act today, is not just to affect the political leadership of Israel. Israel is a democracy. That is why Mr. Netanyahu is Prime Minister. The effect of these acts that I have described is to undercut severely the trust, the confidence, the hope of the people of Israel for peace. Because they don't trust the Palestinian Authority and Mr. Arafat, based on these various acts I have described and Senator D'AMATO has described, to carry out the promises in the Oslo accords to provide security and peace.

The late Yitzhak Rabin, Prime Minister of Israel, was a great leader, a great soldier of the peace, so-called peace of the brave. But I would say today, if Prime Minister Rabin was alive and was still Prime Minister today, he could not accept the continuation of the peace process under the status quo, because the Palestinians have not kept their part of the bargain. So, I fully support the statements made by the Senator from New York. I am grateful the Secretary of State is underway to the Middle East. It will take a courageous and bold action. But the main point here is that Chairman Arafat has to understand—

The PRESIDING OFFICER (Ms. SNOWE). The time for morning business is expired.

Mr. LIEBERMAN. I ask unanimous consent I be given 2 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Madam President, might I ask that we have an additional—up to 15 minutes in morning business to be able to speak on this issue, because I know there are colleagues, my colleague from New Jersey and colleague from California, who would like to speak to this.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. D'AMATO. I thank the Chair.

Mr. LIEBERMAN. Madam President, what I am saying here is that this process—for the first time since September 1993 I fear that the peace process in the Middle East is unraveling. And that would be a terrible result for the people on both sides in the Middle East. The only way it can be brought back on track is for Chairman Arafat to take some unequivocal and strong actions to make clear that he is an enemy of terrorism. That will probably include arresting suspected terrorists. That will include a direct break of this embrace with Hamas. It will include a dedication to destroying the terrorist infrastructure that is part of Hamas. If that does not happen, the process will not go forward. Because the people of Israel—leave aside the Government—the people of Israel will not have the confidence to take it forward.

Here our options are limited. The Secretary of State and her designees are there to try to bring some sense to the parties on both sides. But, insofar as we have options, it suffices to say that in the climate and the reality that has occurred, as Senator D'AMATO has indicated, it seems to me there is very little chance that this Congress would appropriate any funds for the Palestinian Authority. It will make it difficult to renew the Middle East Peace Facilitation Act, which allowed the PLO, the Palestinian Authority, to have an office here in Washington which was closed in August because we didn't renew it.

These are serious consequences which go to the heart of the process and to the hopes of people, on the Palestinian and Israeli sides, for a better future than the war-torn past. I think we are all here appealing to Chairman Arafat, who remains the elected chairman, to seize this moment, show his leadership, or forever be seen in the eyes of history as the man who destroyed the hopes for peace in the Middle East.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, if I might, I don't know, is the time reserved just generally?

Mr. D'AMATO. No. I have asked that we be permitted to speak on this issue for up to 15 minutes. My colleagues have yet to speak. So use whatever time is necessary.

Mr. LAUTENBERG. I thank the Senator from New York. I commend him for his ever-present concern about the well-being of our friends around the world, Israel in this case, and his staunch defense of freedom and democracy against terrorism. I thank him for his initiative today.

It is heartbreaking for all of us, when we see innocent people carried away in stretchers, and the mayhem and the destruction that terrorists visited upon Jerusalem this day. It is not a unique happening. It has gone on for too long. The attempt to suggest that this is a way to obtain peace, or to coerce friends who want democratic societies throughout the Middle East, kind of modeled on what Israel has done—it is a democratic society, as my friend and colleague from Connecticut said. They elected a Prime Minister. It is not for us to agree or disagree. It is irrelevant. The fact of the matter is, it is a democratic society. And what we try to do is encourage the Palestinian Authority to take democratic leadership and represent law and order and defend against terrorism. But we have been grossly disappointed of late.

I was in Israel 2 years ago in April when a bus was exploded by a terrorist. On that bus was a young woman from New Jersey whose family I now know very well. She died in a few days; 21 years old, an innocent victim. She wasn't there trying to hurt anybody. She was there because she was interested in studying Hebrew and the history of the Jewish people. Sometime later another young woman, also from New Jersey, was killed in a terrorist attack in Tel Aviv—just a random explosion, someone willing to take his life, convinced that he would be rewarded for killing himself and killing others.

The one thing we have to insist on in this country is we should not talk to anybody who, in addition to a formal relationship with us, supports terrorism. Syria by way of example. We have an ambassador there. They have representation there. But they are on a list of countries that support terrorism. And we ought to say listen, if that is the way you are going to conduct your life, in terms of the region that you exist in, that you want to encourage terrorism on the one hand and be a friend of this great democracy on the other, it's no go. We ought to say that to countries all around the area. If you in any way—even those that we have established some friendships with—if you in any way encourage or inflame the fire of violence and terrorism, our relationship is going to change. We cannot sit by and simply pour our hearts out and say, ''Isn't it sad? Somebody lost a son, somebody lost a daughter, mother, father, sister.'' It has to be more overt than that.

We have seen what happens with terrorism. We have seen it in our own country. It shocked everybody, in Oklahoma, the Port Authority building in New York, the Trade Center. It is frightening. It is a disgusting, revolting act. Think of it, that someone feels justified, for political or personal reasons, to take others' lives in the name of a cause. We ought not let it be misunderstood, that we will never, never, never accept a handshake on one hand from someone who is going to support terrorism with the other hand.

Mr. D'AMATO. I wonder if my colleague might yield for an observation?

Mr. LAUTENBERG. Sure.

Mr. D'AMATO. Do you think that we should consider very seriously going forward with a cutoff of funding to Yasser Arafat and the Palestinians, unless we see some—I am not saying tomorrow or the next day—but unless we see some concerted action? I think we have to begin to let him know. I am wondering what my colleague thinks about that—my colleagues think about that? Because, it seems to me, we say one thing and we do the other. We are permitting, I think, ourselves to look rather foolish in the continued funding, or permitting funding to continue to flow.

Mr. LAUTENBERG. The question my colleague from New York State raises is a very complex one. Because we want to continue a peace process. I spent some time in Ireland. I visited in the north. We made investments in that society, in the northern section, so that people could elevate their standard of living and reduce some of the anger and the rage. And we continued. I was pleased to see, in the last couple of days, discussions taking place that include the Sinn Fein, with some Members of the Senate and so forth, to try to say, ''Stop the killing, stop the killing.''

I met with people in New Jersey, and we disagreed on the tactic that was being used, the violence in the North, to try to bring about the kind of equality that all of us like to see for our families and our friends. Thusly, I am reluctant to say just offhand that we ought to simply cut off the relationship.

I have faith that the Palestinian people also want peace. I don't think that they, any more than anyone else, likes the prospect of a son or a daughter dying in a conflict. There are those madmen—we have them in our society; we saw it in Oklahoma—people who are part of our culture who do something that is so outrageous. We see it in violence around the country all too frequently. We just saw it in New Hampshire.

I will say this, though, that I think the Senator confirms what I was talking about, and that is, we have to, as they say, tighten the screws. We cannot have a Hamas operating under one disguise in one place doing a good deed here and there—and I don't care how many good deeds they do—if the alternative is to have another branch of that organization that kills people, those who might disagree with them, while they tend to the needs of others who are indigent medically, troubled, et cetera.

So we have to make sure that if you want to be a friend of the United States, if you want us to work with you in any continued way of support for democracy, for economic betterment, that you have to leave out any assistance or any encouragement for terrorism, and that means reacting to terrorist acts by saying, ''We condemn it and we condemn those who did it,'' and not hedge what they are saying, not permit them to say, ''Well, we don't like terrorism, but, in this case, maybe''—baloney.

What we say is, if anybody participates in any support of terrorism, they can't be friends of ours and they can't derive any benefit from it.

I will relinquish the floor with a word of encouragement for Secretary Albright to continue her effort, for all the peacemakers to continue their efforts, to try to get by this but at the same time to make certain that those who commit terrorist deeds know that they cannot sit at the table at the same time that the peacemakers do. I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, if I may, I would like to continue along the lines of some of my colleagues' comments with some of my own, informal as they may be, about what happened this morning. I find myself very much thinking along the lines of the Senators from New York, Connecticut and New Jersey.

I watched the CNN coverage from Jerusalem this morning, and my heart very much went into my throat. I wondered how much can the people of this small nation endure. I looked at the faces on the streets, and I saw a kind of brokenness, a spirit diminished, a hurt that was turning rapidly to anger.

I have been one on the Foreign Relations Committee who has been a supporter of the Middle East Peace Facilitation Act. That act expired prior to our recess. It was not renewed. My understanding is that as a result the Palestinian office in this area has closed, and I believe it should remain closed, and that the aid specified through the Middle East Peace Facilitation Act, which we call MEPFA, has ceased. I believe that aid should cease. I believe that the Middle East Peace Facilitation Act at this point in time should not be renewed and, as a member of the Foreign Relations Committee, it is going to take a great deal to convince me to go in any other direction.

The last terrorist attack before this was July 30. Since then, there has been an aborted attack. Today, we saw three suicide bombers go into a busy pedestrian mall and blow themselves up in a kind of fanaticism that certainly is not understood in Western countries or really any peace-loving country. It is not the act of peace-loving people to blow themselves up and blow up anyone that happens to be around them.

I submit that the only reason these bombs are not blowing up inside rooms, businesses, and convention halls—and causing even more casualties—is that in Israeli, everyone is searched when they enter public buildings. This is a terrible way for people to have to live. At some point it almost begins to approach the atrocity of a concentration camp if people must live this way.

My own view is that it takes two parties to pursue peace, and both parties must want peace. I had thought up to this point that Yasser Arafat wants peace. I must tell this body honestly, I no longer believe that to be the case. I watched his kiss with a Hamas leader, and I know that when public leaders engage in these kinds of symbolic gestures, it sets forth signals, signals to every Hamas terrorist everywhere, that their actions are, to some extent, condoned by the chairman of the Palestinian Authority, the head of that authority. That is a terrible signal to send if you are going to be seriously engaged in a peace process.

So I have come to believe that that authority at this stage does not want peace. I have come to believe it when I read that members of the police department were actually engaged in complicity with terrorists to allow a terrorist attack to take place.

I believe the following: First, that if there is ever a time for the Arab world to come forward and take a united and strong position against Hamas and Hezbollah and any other organization that would carry out these acts, it is now. If there ever was a time for the Arab world to begin to press for the arrest, for the destruction of these terrorist organizations, it is now. Outside of concerted action by the Arab world, I don't see how a peace process can go ahead with any progress whatsoever.

Second, I believe we should not renew the Middle East Peace Facilitation Act. I believe that all funding should cease at this point. And I must finally say that I personally have very mixed feelings about Secretary Albright's trip to the Middle East. Yes, I believe we should resist terrorism. I am not sure that going to the Middle East at this point in time sends the signal that we do, indeed, resist terrorism. It seems to me that if both parties, Israel and the Palestinians, want to discuss peace and the United States is going to carry out our role as an honest broker, this peace can be brokered elsewhere than on Israeli soil at this point in time.

When three people move forward to kill themselves and kill others, I only can believe that other attacks are going to follow. If I am any judge at all of the faces, the Israeli faces I saw on television this morning, I would have to say that peace is having a price that free people have a great deal of difficulty in paying, because it means your child can't go to school, you can't shop, you can't walk down a street. You become a hostage, in another sense.

So I make these comments with very deep concern as one who has tried to work on resolutions passed by this body so that they weren't inflammatory to the peace process, so that Jerusalem, as an issue, could be handled in a way that was not inflammatory, so that the Middle East Peace Facilitation Act could go ahead. But as one Member of this Senate, I am now at the point where I believe that without a major commitment from the Arab world, from Mr. Arafat and from his government, peace is at the weakest point that I have ever seen since the peace process has begun.

I thank the Chair. I yield the floor. I thank the Senator from New York for his comments.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. The Chair has been gracious in extending morning business time, but I would like to make one observation, if I might, and ask that the time be continued.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Madam President, I think that this picture and the caption describes it. Here is Yasser Arafat embracing a leader of terrorism, a killer, the leader of Hamas. The caption reads: ''Defying Israel, Arafat embraces Islamic militants.'' It is better titled: ''Defying peace''—defying peace. It is better titled ''Embracing terrorists,'' because that is exactly what he is doing.

My colleague from California, I think, described it quite correctly. It is not good enough to speak about peace and yet to give sanctuary, safe haven and tangible, visible support to those who bring about these horrific acts. That is what Mr. Arafat has done. Generally, he has done it under the cloak of speaking in a language and in places and at times where the world does not hear it, but that selected groups hear his words. Here he has done it in the way that the camera has captured him and his words in giving support and comfort to those who bring terror to the streets and to the homes of innocent civilians.

Mrs. BOXER. Mr. President, once again innocent Israeli civilians have been murdered by the enemies of the peace process. I rise today to strongly condemn this cowardly act of violence and reaffirm my support for the people of Israel and for the people who want peace throughout the Middle East.

There is no doubt that today's suicide bombings were carefully timed to inflict the greatest number of civilian causalities. Three explosions in quick succession rocked the Ben Yehuda pedestrian mall during the busiest time of day. These bombs killed at least 6 and injured nearly 200 people.

As expected, the terrorist group Hamas has claimed responsibility for this deplorable act. They are responsible for the blood and carnage in the streets of Jerusalem, and they must answer to the grieving parents and families of the victims.

Last month, I stood before this body to urge Yasser Arafat and the Palestinian Authority to keep their promise and crack down on terrorism. As evidenced by his complete inaction since the July 30 bombing, Mr. Arafat has not done anything to join the fight against terrorism. If the peace process is to move forward, he must find the courage to confront those who would victimize innocents to undermine peace in the Middle East.

Secretary Madeleine Albright is scheduled to visit the Middle East next

week, and there are many who believe these bombings were intended to disrupt her visit. Mr. President, this deliberate act of violence against Israel will not deter us in any way from moving forward with the peace process—indeed, it will only strengthen our resolve. It is critical that America continue to play a major role in the peace process. We will not allow terrorists to set the agenda for the peace process. We will not allow cowards to strangle the prospects for peace in the Middle East.

In these difficult times, the need for strong American leadership becomes ever clearer. That is why I am very pleased that Secretary Albright has decided to proceed with her planned visit to the Middle East. It is my profound hope that her efforts can jump start the ailing peace process.

I believe Mr. Arafat and the Palestinian Authority must both agree to fully engage in the peace process and take dramatic steps to halt these terrorist attacks if they wish to continue to receive financial assistance from the United States. Unless such action is taken in the immediate future, I will steadfastly support cutting any and all aid to the Palestinian Authority. It is truly unconscionable that American money, given in good faith, be used to aid those who would conspire with terrorists.

Israel's greatest responsibility is to protect her citizens. Mr. Arafat must understand that a true peace can be achieved only when Israeli citizens are secure in their homes, in their places of worship, and on their streets. They deserve no less.

I wish to express my sincere condolences to the Israeli people on this senseless tragedy.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1079

(Purpose: To increase the amounts made available to carry out title III of the Older Americans Act of 1965)

Mr. D'AMATO. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments are laid aside. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO] proposes an amendment numbered 1079.

Mr. D'AMATO. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 45, line 13, strike ''$854,000'' and insert ''$854,074,000 (and an additional amount of $40,000,000 that shall be used to carry out title III of such Act)''.

On page 85, line 19, strike ''$30,500,000'' and insert ''$70,500,000''.

Mr. D'AMATO. Madam President, I thank Chairman SPECTER and the ranking minority member, Senator HARKIN, for their incredible stewardship and leadership in developing the 1998 Labor, Health and Human Services, Education appropriations bill. It is one of the most difficult bills that we have to deal with because the needs are so great; the needs for increased medical research, for research in all of the areas, whether it be for breast cancer, whether it be for kidney programs, whether it be for the programs for AIDS research.

Encompassed in this is how do we share the resources which are so limited? So it really comes down to, unfortunately, choices, of not giving sufficient funding to some of the most critically important areas affecting our health, affecting infants, and affecting all of our populations.

But there is another population that continues to grow, a population that has not, unfortunately, had their needs met, too. That is our senior citizens. That is why I rise today, on behalf of America's elderly citizens, to increase the title III of the Older Americans Act. I offer an amendment that would increase it by $40 million, for a total of $893 million. The current Older Americans Act funding includes a 2-percent increase. That is 15 percent. That is a cost-of-living increase over last year's allocation.

Most people would say, ''Well, that's not bad in these times of austerity.'' I agree. But I think we have to look at the problem. The primary goal of these community services is to keep millions—millions—of frail elderly people living independent in their own homes, in their own apartments, for as long as possible, allowing them to avoid unnecessary institutionalization and saving billions of dollars, not to mention improving their quality of life.

So the Older Americans Act provides a whole variety of programs, home and community-based services to the elderly, including congregate and home-delivered meals—Meals on Wheels; we have heard of that—transportation so that seniors do not live as shut-ins so they have an opportunity to come together with friends and neighbors, senior employment, senior centers, adult day care and other services.

Three of these services account for more than two-thirds of the title III funding: Congregate meals, that is $250 million; home-delivered meals, $134 million; and transportation, $63 million. No one can deny the incredible needs and the fact that, if anything, they grow and grow.

The face of America's population, Mr. President, is changing. It is growing older. Believe it or not, those elderly people who are 85 years of age or older are growing faster than any others. They are growing at a faster rate—85 and older. So when we talk about the needs of the frail elderly and keeping them from being institutionalized, this is becoming an increasing problem.

The elderly population over age 85 will increase by 36 percent by the year 2005. Think of that; an incredible 36 percent. That is going to call for increased services, increases well beyond what we can imagine and envision today. And unless we do, we are talking about a vulnerable population. They will have no other alternatives in many cases than to be institutionalized. I suggest not only the quality of life of the seniors then becomes degraded to the extent that we do not even like to think about it, but the cost factors will become incalculable.

The typical Older Americans Act participant, Mr. President, to get a profile of who is that person, is a woman over 75, living on a very limited fixed income, who needs daily help in preparing meals or weekly transportation to a doctor.

Thirty-nine percent of the Older Americans Act participants have incomes at or below the poverty level.

Among States, the poverty rates for participants range from 17.2 to 86.9 percent. Twelve States report at least half of their participants have incomes at or below the poverty threshold.

Mr. President, why is a $40 million increase so desperately needed? Well, despite the steady funding increases, the effect of inflation and the tremendous population growth have diminished the actual impact of the annual appropriations increases. Over the past 15 years, there has been a 40-percent loss in the program's capacity to meet the needs of older citizens due to a combination of the following factors: increased costs due to inflation, serving increased numbers of frail elderly who need more, and reduced Federal funding.

If inflation and the increasing age population were accounted for from the OAA's start in 1973, we would have had to double the funding. So while the request for doubling the funding level in 1 year is unrealistic, certainly—certainly—the request that we put forth at 5 percent, or $40 million, is one that I believe is extremely conservative and one that I hope we can meet.

Where do we find the funds? Let me first say the committee has done an excellent job. It has identified funding, an increased funding of $15 million, by reducing the general administrative costs, which amount to about $1 billion, the bureaucracy, the overhead for administering these programs, for the bureaucrats here in Washington and in other areas. I believe that by a further reduction by 5 percent, we can add $40 million. That is a very modest reduction as it relates to overhead. And that is what we intend to do.

So what we are talking about is making more resources available for people, the frail elderly, people who need it, a population that averages 75 years of age, a population that continues to

increase, as opposed to decreasing resources for bureaucrats.

I believe in the days of computerization, et cetera, and effective efficiency, we can do that. We can actually increase the services with less people by way of attrition, by way of maximizing the efficiency and the effectiveness that one person today can bring to the work force by use of the computer that can do the work of two or three or four.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. ROBERTS). Is there a sufficient second? There appears to be.

The yeas and nays were ordered.

AMENDMENT NO. 1079, AS MODIFIED

Mr. D'AMATO. Mr. President, I ask unanimous consent that I be allowed to submit a modification to the amendment which I have offered.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 1079), as modified, is as follows:

On page 45, line 13, strike ''$854,074,000'' and insert ''$894,074,000''.

On page 85, line 19, strike ''$30,500,000'' and insert ''$70,500,000''.

Mr. D'AMATO. Mr. President, I ask unanimous consent that this matter be laid aside and be voted on at 5:30.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. I thank the Chair and thank my colleagues for their patience.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. I thank the Chair.

AMENDMENT NO. 1080

(Purpose: To increase funding for the Public Charter Schools Program under Part C of Title X of the Elementary and Secondary Education Act of 1976)

Mr. LIEBERMAN. Mr. President, I have an amendment which I send to the desk at this time.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN], for himself and Mr. COATS, proposes an amendment numbered 1080.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 50, line 9, strike ''$1,271,000,000'' and insert ''1,256,987,000'', and on line 10, strike ''$530,000,000'' and insert ''$515,987,000''.

On page 53, line 12, strike, ''$310,000,000'' and insert ''285,000,000''.

On page 59, line 12, strike, ''$362,225,000.'' and insert ''352,225,000, of which $40 million shall be made available to carry out Part A of Title X of the Elementary and Secondary Education Act of 1965.''

On page 59, line 14, after ''said Act'' insert '', $100,000,000 shall be available to carry out part C of Title X of the Elementary and Secondary Education Act of 1965,''.

Mr. LIEBERMAN. Mr. President, I am proud to rise today to offer an amendment, along with my good friend and colleague Senator COATS from Indiana, which would increase our investment in one of the most promising engines of education reform in America today, which is the charter school movement. This amendment would increase funding for the charter school grant program from the current level of $51 million up to $100 million for fiscal year 1998.

Mr. President, we recognize that this is a sizable jump in funding, but let me put it in context and then go on to explain why we believe it is more than warranted.

Earlier this week, on Tuesday of this week, my friend and mentor, Bill Bennett, wrote a column on the op-ed page of the Wall Street Journal in which he began with some startling numbers. ''This morning,'' that is Tuesday morning, ''a record 52 million children will walk into America's classrooms. And this year Americans will spend more than a quarter of a trillion dollars trying to educate them.''

So when we think, as this amendment would do, Mr. President, of taking the $51 million the Federal Government now invests in charter schools and raising it to $100 million—a sizable jump; just about doubling it—let us put it in the broader context of the quarter of a trillion dollars that is being spent every year in this country to educate our children. This additional $50 million, I think, provides enormous hope that the remaining quarter of a trillion dollars will be better spent.

Dr. Bill Bennett went on to say that these numbers alone ensure that education will be at or near the top of the national political agenda, and indeed, in addition to this, there is greater political emphasis on social issues. Education is how many people talk about the condition of our children, cultural decline, and the Nation's moral well-being.

Dr. Bennett goes on to cite a number of hopeful signs of reform and progress occurring in our education system, including some of the superb experiments that are now being tried with school choice or school vouchers, school scholarships. But he also mentions charter schools. I quote from his article. ''Public schools that are freed from many regulations, in exchange for greater autonomy and more accountability, are flourishing. There are now more than 700 charter schools in 28 States.''

Mr. President, the goal of this amendment is to help us open, help the States, help individuals, help entrepreneurs open hundreds of more charter schools. This movement has quickly become one of the most popular and encouraging developments in the world of education reform. Since the first charter school opened in Minnesota in 1991, 29 States and the District of Columbia have enacted charter programs. And as children head back to school this month, it is expected that more than 700 charter schools will be in operation across the country, including a whole new group in my own State of Connecticut, practically tripling the number of charters that were in existence just 2 years ago.

The appeal of this new breed of schools is obvious. In the context of a school system that is not adequately educating too many of our children, charters offer the promise of higher standards, greater accountability, broader flexibility to innovate in the classroom, and ultimately greater choice, which is what more and more parents want in public education. So far the broad array of charter schools already in business are delivering on that potential. Parents give overwhelmingly high marks to charter schools for their responsiveness to them, the parents, as customers. Several independent studies show that this, in turn, is helping to generate greater parental involvement in the education of their children.

These studies also show that charters are effectively serving diverse populations, particularly many of the disadvantaged and at-risk children that traditional public schools have struggled to reach. While it is too soon to determine what impact charter schools are having on overall academic performance, the early returns in places like Massachusetts suggest that charters are succeeding where it matters most, in the classroom.

Perhaps the most powerful endorsement of the charter school approach came recently from the superintendent of public schools for the Seattle public school district, who suggested that the city should consider making every school in its district a charter school, freeing the schools of the burdens of the central bureaucracy, setting a series of standards of accountability that would have to be met by those who run the school in a given amount of time and understanding that the charter is not forever. The charter is only renewed if the goals set out within it are realized.

The movement is being driven by a growing legion of parents, educators, business leaders and community activists who are convinced that alternatives in public education, including charter schools, represent the future of public education in America. But Congress, to our credit, has made a valuable contribution to the growth of charters through the Federal charter grant program, which was authorized in 1994 with broad bipartisan support. I was privileged to be a cosponsor of that legislation with Senator David Durenberger, the main sponsor, Senator from Minnesota.

Over the last 3 years, the Federal charter program has helped scores of charter schools open. What do we do? We defray the costs many groups face in trying to start a school from scratch. That is what the Federal money goes to. Most States provide charter schools, and this is the case in

Connecticut, with a per pupil allotment once they are in operation. But charter operators have to scramble to cover such startup expenses as planning a curriculum, leasing a building, hiring a staff.

A survey of charter school operators recently conducted by the Department of Education highlighted this problem showing that it was by far the biggest obstacle to success that charter school operators face. It is that obstacle that this amendment intends to diminish.

As the charter movement expands, the demand for this aid will only continue to grow with it. With the number of charter schools mushrooming each year, our ability to help them meet their startup costs will quickly diminish, unless we increase the amount appropriated, as this amendment would do.

President Clinton recognized this when he issued a challenge in the State of the Union to double the funding for the Federal charter program. That is what we do, Senator COATS and I, in this amendment.

By doubling funding for this program, we would help scores of new charter schools make the transition from the drawing board to the blackboard, and provide thousands of additional students with an opportunity to attend one of these innovative, performance-based programs. Moreover, we would also send a strong message to charter advocates and to families in general that the Federal Government is committed to supporting the good work that is happening at the State and local level and that we are serious about fundamentally improving public education.

To make sure we spend this new money wisely, Senator COATS and I also intend to introduce legislation this fall aimed at strengthening the Federal charter program. From our experience to date, we have learned some valuable lessons about how we can improve this program to speed the development of charter schools in participating States and to also encourage nonparticipating States to join this movement. The legislation we're preparing would use the new Federal funding to reward those States that are most actively moving to create charters. It would also tighten a few unintended loopholes in the current law that have allowed schools that are not true charters to receive Federal aid that was not intended for them.

We can begin strengthening this program immediately by increasing our investment in charter schools. And that is the purpose of our amendment today. To pay for this new investment, we are proposing shifting a relatively small amount of funds from three broad-based Federal programs—the title VI block grant account, Goals 2000, and the Fund for the Improvement of Education. All three of these programs are aimed at promoting educational reform and innovation, which is the same exact mission of the charter school program. So in essence, rather than cutting these three broad-based accounts, our amendment would simply earmark a fixed portion for a highly effective, well-targeted, and broadly supported program.

The three programs from which we are shifting funding are all worthwhile efforts. But we feel strongly by earmarking a relatively small amount from them for the charter school program, we will be getting the most bang for the books.

We are convinced that the charter movement, as charter expert Bruno Manno of the Hudson Institute has said, is arguably the most vibrant force in public education today. It has managed to bring together parents, educators, and political leaders from both parties in support of an effort to inject more choice, accountability, and competition into our public schools, an effort that focuses first and foremost on performance, not process—performance in educating our children.

I hope we can come together ourselves in a bipartisan fashion, as we did in launching the Federal charter program, to demonstrate our commitment to these goals by passing this amendment. I thank the managers of the bill for the opportunity to speak on this important issue, and would ask them for their support.

Mr. President, let me discuss the funding offsets for the Lieberman-Coats charter school amendment.

The Lieberman-Coats amendment would increase funding for the Federal charter school grant program by $49 million. Here is a breakdown of how this amendment is paid for: $25 million would come from the title VI block grant program that supports State and local driven innovation efforts. This would leave funding for this account at $285 million; $14 million would come from the Goals 2000 program. This would leave funding for this account at $515.9 million, which would still amount to a $25 million increase over the fiscal year 1997 level; and $10 million would come from the Fund for the Improvement of Education, a pool of discretionary funds administered by the Secretary of Education. This would leave funding for this account at $40 million, the same amount appropriated for fiscal year 1997.

All of these programs are broad-based efforts aimed at promoting education reform and innovation and lifting standards. The charter school program is dedicated to these same goals. So rather than cutting the three programs listed above, the Lieberman-Coats amendment simply earmarks a fixed portion of these accounts for arguably the most promising education reform and innovation initiative in the country.

I notice the presence on the floor of my cosponsor and Senator STEVENS as well. I yield the floor.

Mr. STEVENS. Mr. President, I ask unanimous consent the vote occur on the pending D'Amato amendment at 4:30 p.m. today, and that no amendments be in order to the D'Amato amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Indiana is recognized.

Mr. COATS. I understand that shortly the Senator from Alaska will make a proposal that is certainly acceptable to Senator LIEBERMAN and I, and I will be very brief in my comments.

I am pleased to join my colleague from Connecticut in coauthoring and cosponsoring this amendment to increase funding for charter schools. Clearly, we are in a situation where I think there is a growing recognition that the status quo in our public schools is unacceptable, particularly our public schools located in low-income and urban areas. That status quo has existed for quite some time.

It has been nearly 13 years since the President's commission reported about mediocrity in public education. We have seen numerous attempts both through public policy and through local initiatives to try to address the mediocrity and improve educational opportunities for our young people. We have met considerable resistance from the Federal Government, from the Department of Education, because they do not want to upset the status quo. Yet parents are voting with their feet and with considerable sacrifice and demanding at local and State levels that change be made. They are demanding alternatives.

Senator LIEBERMAN and I have explored a possibility of vouchers for low income, providing parents who do not have a choice, a choice that most of the rest of us have, that if their failing public school is not educating their young people they would have some means and wherewithal to utilize a voucher to achieve a better education.

This is not that amendment. This is an amendment that addresses another alternative, a viable alternative called charter schools that Senator LIEBERMAN has said is being more and more accepted throughout America. Even the Department of Education, in releasing its first formal report on the study of charter schools, has some findings indicating that charter schools have racial compositions similar to statewide averages, and in many cases have a higher proportion of minority students. So the charge that they are just for a certain race or just for the elite is not a well-founded charge.

Sixty percent of public charter schools are new startups rather than conversions of public and private schools to charter status. They enroll roughly the same percent of low-income students on the average of other public schools. So a lot of red herrings about charter schools undermining the effectiveness of public schools is not proven.

The Hudson Institute, located in Indianapolis, has undertaken a very significant and comprehensive study of

charter schools called Charter Schools in Action. Their research has involved visiting 14 States, 60 schools, and visiting thousands of teachers and students. The key findings are that three-fifths of charter school students rate their charter school teachers as better. Over two-thirds of parents say the charter school is better than the child's previous school with respect to class size and school size. Over 90 percent of the teachers are satisfied with their charter school educational philosophy, their size, colleagues and students. And among students who said they were failing at their previous school, more than half are now doing excellent or good work.

The gains were dramatic, most dramatic for minority and low-income youngsters, and were confirmed by their parents.

In summary, the Hudson Institute study found charter schools point to important ways to improve and reinvent public education as a whole. The implications from the success of charter schools indicate that successful public schools should be consumer-oriented, diverse results oriented and professional places that also function as media institutions in their area.

Because of the tremendous success of charter schools in the past 6 years, I joined Senator LIEBERMAN in an attempt to double the funding. As Senator LIEBERMAN pointed out, they offer great accountability, broader flexibility for classroom innovation, and ultimately more choice in public education.

Senator LIEBERMAN and I have addressed what we think are some offsets to provide for this doubling of funding to encourage charter schools. There has been some concern about where that funding comes from. I think there are some creative, innovative, and useful offsets, but it would engender considerable debate and discussion and might undermine this effort. Senator STEVENS has found, I think, a very acceptable way to address this, and I appreciate his involvement and his efforts and his support for this.

With that, I thank my colleague, Senator LIEBERMAN from Connecticut, for his initiatives, and I am pleased to join him in this.

I yield the floor.

Mr. STEVENS. Mr. President, this pending Lieberman-Coats amendment is a good one. We see no reason to take further time on it because the House bill does have the $75 million for charter schools. The effect of this amendment would be to increase it to that amount.

It is the intention of the chairman of the subcommittee, Senator SPECTER, to notify the House that in conference we will recede to the House on this item.

I appreciate the indulgence of the two Senators, Senator LIEBERMAN and COATS, and ask under the circumstances that they accept our word that will be the amount of money provided for charter schools under this bill when it comes out of conference.

Mr. LIEBERMAN. Mr. President, I thank the Senator from Alaska very much for his statement. The willingness of the Senate conferees to yield to the House on this would accomplish an enormous step forward in Federal support of the charter school movement. There is no need to take any more time of the Senate. Obviously, the word of the Senator from Alaska is bankable. I thank him for that.

I thank my colleague from Indiana and I appreciate very much another expression of bipartisan support for this educational reform movement that is sweeping America. With our help, it will help it even more with this additional amount of money.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to compliment and congratulate the Senators from Connecticut, Indiana, and Alaska for not only their support for charter schools but also for the additional funding, because this is a success story. There are successes in communities all across the country. The number of charter schools has exploded. I think there are over 700 now, and growing.

A lot of States are looking to see how can we improve our schools, how can we make education better. Charter schools have been a proven success.

I compliment my colleagues for bipartisan work in making a real addition to a proven success story and improving education.

AMENDMENT NO. 1080 WITHDRAWN

Mr. LIEBERMAN. Mr. President, I ask unanimous consent to withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The amendment (No. 1080) was withdrawn.

AMENDMENT NO. 1081

(Purpose: To limit the use of taxpayer funds for any future International Brotherhood of Teamsters leadership election)

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The pending amendments are set aside.

The clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for himself, and Mr. JEFFORDS, proposes an amendment numbered 1081.

Mr. NICKLES. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 25, between lines 9 and 10, insert the following:

SEC. . (a) IN GENERAL.—Except as provided in subsection (b), none of the funds made available under this Act, or any other Act making appropriations for fiscal year 1998, may be used by the Department of Labor or the Department of Justice to conduct a rerun of a 1996 election for the office of President, General Secretary, Vice-President, or Trustee of the International Brotherhood of Teamsters.

(b) EXCEPTION.—

(1) IN GENERAL.—Upon the submission to Congress of a certification by the President of the United States that the International Brotherhood of Teamsters does not have funds sufficient to conduct a rerun of a 1996 election for the office of President, General Secretary, Vice-President, or Trustee of the International Brotherhood of Teamsters, the President of the United States may transfer funds from the Department of Justice and the Department of Labor for the conduct and oversight of such a rerun election.

(2) REQUIREMENT.—Prior to the transfer of funds under paragraph (1), the International Brotherhood of Teamsters shall agree to repay the Secretary of the Treasury for the costs incurred by the Department of Labor and the Department of Justice in connection with the conduct of an election described in paragraph (1). Such agreement shall provide that any such repayment plan be reasonable and practicable, as determined by the Attorney General and the Secretary of Treasury, and be structured in a manner that permits the International Brotherhood of Teamsters to continue to operate.

(3) REPAYMENT PLAN.—The International Brotherhood of Teamsters shall submit to the President of the United States, the Majority and Minority Leaders of the Senate, the Majority and Minority Leaders of the House of Representatives, and the Speaker of the House of Representatives, a plan for the repayment of amounts described in paragraph (2), at an interest rate equal to the Federal underpayment rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 as in effect for the calender quarter in which the plan is submitted, prior to the expenditure of any funds under this section.

Mr. NICKLES. Mr. President, the amendment I send to the desk on behalf of myself and Senator JEFFORDS is an amendment that deals with the potential rerun of the 1996 Teamsters election. I think most of my colleagues are aware the Teamsters election, which was held in 1996, has now been held invalid, at least by the administrator overseeing the election who determined that there was fraud, that there was corruption, and that there needed to be another election. She has now made that petition before the U.S. district court. The court will rule on that. My guess is she will probably order another election.

The purpose of this is to ensure that taxpayers won't pay for the next election. To give my colleagues a little history of how the U.S. taxpayers paid for the last one, I have heard estimates of around $22 million. I also heard more than $22 million, maybe higher or closer to $28 or $29 million, but the taxpayers paid millions of dollars, $20 million-some for the 1996 Teamsters election.

Now it seems that the Federal overseer of that election says it was not fair, it was not right, there was corruption, it needs to be held over again.

The purpose of this amendment is to say that taxpayers will not pay for it again. I might mention, somebody said why would taxpayers pay for it in the first place? Mr. President, 99 percent of all union elections that are held in this country, the U.S. taxpayer does not

pay for. There was a 1989 decree with the Teamsters and the Justice Department entered into in 1989 that called for the elections both in 1991 and 1996. The 1991 election, I might mention, had oversight by the Federal Government but was not paid for by the Federal Government. Actually, the Teamsters paid for the 1991 election.

With Federal Government oversight, no allegations of improprieties or corruption were made. It was a good election. The 1996 election, however, provided for in the decree, provided that the taxpayers would pay for the 1996 election. Now the overseer of that election said, wait a minute, there was fraud, we will have to have another election.

The purpose of this amendment is, let's not pay for it, let the Teamsters pay for it. Somebody said, well, maybe they do not have the money, it could cost several million. I heard it could cost $10 million, it might cost $20 million. Who knows? I think they will be more frugal if they are paying for it. Certainly, they are capable of paying for it. In the event they do not have the money, our amendment allows for the taxpayers to pay for it, but we have to be paid back.

Again, I think taxpayers did not get their money's worth out of the 1996 election. If you paid $20 million-some and you find there was rampant corruption, fraud, and abuse to the extent we have to have another election—we should not let that happen again.

So, that is the purpose of my amendment. I think it is a fair amendment. It is in accord with the 1989 decree ordered in the past. I urge my colleagues to support this amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

AMENDMENT NO. 1082 TO AMENDMENT NO. 1081

Mr. KENNEDY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 1082 to amendment No. 1081.

The amendment is as follows:

At the end thereof, insert the following:

(c) Nothing in this section shall be construed to affect the obligations of the United States under the consent decree in *United States* v. *International Brotherhood of Teamsters,* 88 Civ. 4486 (DNE) (S.D.N.Y.), or any court orders thereunder.

Mr. KENNEDY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, just for the benefit of the membership, to describe where we are, the amendment that I have offered would include the Nickles amendment, but it would also add to the Nickles amendment: ''Nothing in this section shall be construed to affect the obligations of the United States under the consent decree'' entered into in United States v. Teamsters, decided in 1989.''

So, effectively, the Nickles amendment would be perfected with the Kennedy amendment. All we are saying with the Kennedy amendment would be that nothing in the Nickles amendment would eliminate the obligations of the United States that was a part of a consent decree that was signed in 1989 because we are not operating in a vacuum here today with regard to the Teamsters elections. We are basically operating on the basis of a consent decree that was signed by the previous administration, signed by the Bush administration, and supported by the Bush administration.

All that we are saying is that whatever decision that is going to be made, or whatever language would be included in the Nickles amendment, it will not be contrary to what was agreed to by the United States, agreed to by the U.S. Government and the previous administration and adhered to by the courts. We don't know what the future is going to bring with regard to any potential future election or what the allocation of responsibility would be in terms of who would be responsible to pay for various aspects of the election. We don't prejudge that. All we are saying is that nothing in the Nickles amendment will, in any way, undermine the responsibilities of the United States, which I believe is a solemn agreement and a solemn commitment, and that has been accepted in the courts of law by the United States.

Now, Mr. President, this amendment, I believe, is basically a transparent attempt to punish the Teamsters Union for winning the UPS strike, and it doesn't deserve really to pass. This issue is no light matter. The amendment would require the Federal Government to abdicate its responsibility under the court-approved consent ordered and signed by the Justice Department under the Bush administration. If the Federal Government abdicates this responsibility, it could be subject to contempt proceedings in the Federal court.

The amendment would deny Federal funds to oversee the forthcoming Teamsters election, which had been ordered after the 1996 election was nullified by the Government-appointed election officer. That election was paid for by Federal dollars. The Federal Government agreed to fund that election under a 1989 consent order in the Federal court of New York City that resolved a racketeering suit brought by the Government. The suit was a culmination of over 30 years of effort to eliminate organized crime from the leadership of the Teamsters Union. Congress has been heavily involved in that process. From the McClellan committee hearings in 1957 to the Senate permanent subcommittee investigation hearings in 1994, we have worked to reduce the influence of organized crime in the union and in the industry where its members work.

In 1988, the Justice Department, under President Bush, sued the Teamsters under the Federal racketeering laws. The charge was that the union was dominated by organized crime. That was settled in 1989. The court-approved consent order was designed to rid the union of officers with ties to organized crime and to create a new, open and democratic structure in the union. The consent order provided that the 1991 election for Teamster offices would be supervised by a court-appointed election officer. The consent order also required the 1996 election to be supervised by the election officer.

Let me quote the union-defendant's consent to the election officer, at Government expense, to supervise the 1996 elections on page 16 of the consent order:

> In accord with that decree, the election officer supervised the '96 election, at Government expense. Late last month, the officer ruled that the '96 election must be rerun because of irregularities committed by consultants to one of the candidates. The election officer specifically refused to find that any union officer or member committed any misconduct and noted that Teamster President Ron Carey cooperated with the election officer in a manner inconsistent with guilt. Under the consent order, the Federal court must formally order any rerun election that is held. The court's decision will be issued later this month.

It is the consent order that obligated the Government to pay for the 1996 election. Under the consent order, any rerun of that election ordered by the election officer should be Government-funded. Yet, this amendment asks the Government to walk away from that clear obligation. If passed, the amendment would order the Government to subject itself to a contempt proceeding. These financial obligations were entered into by a Republican-controlled Justice Department and a Republican administration. They were part of a comprehensive and successful effort to root out organized crime from the Teamsters Union and restore democratic process to that union.

It is an outrage to ask Congress to abdicate our responsibility to help in eliminating corruption in this union. The heart of this amendment is an attempt to punish the Teamsters for their extraordinary success in the recent UPS strike, in which the Teamsters won 10,000 more permanent jobs for their members, improved benefits for all 185,000 UPS employees, and sensitized the entire Nation to the gross abuses in many workplaces that force hard-working men and women into part-time jobs with lower wages and lower benefits than they deserve.

Some of our Republican friends may believe the Teamsters should be punished for these gains. I believe that they deserve praise instead of punishment. I urge my colleagues to give our amendment the kind of support that it deserves.

Mr. NICKLES. Will the Senator yield for a question?

Mr. KENNEDY. I am glad to.

Mr. NICKLES. In looking at your amendment, you said that nothing in this section should be construed to affect the obligations under the consent decree. I might agree to that part. But then you also add, ''or any court orders thereunder.'' What do you mean by that last few words?

Mr. KENNEDY. I would expect that what we would include in that is any court orders that would be related under the consent decree or that would be related to the consent. Is there something in particular—I would be glad to attempt to define that, if the Senator has some particular concerns in some particular way. But it seems to me to be fairly clear. Any of the orders that would be a part of that consent decree. Now that we are retained and we are within the consent decree, there would be any of the court orders with regard to the various elections. And I would expect that as we did before, we would want to comply with the consent decree in those areas.

Mr. NICKLES. I am just trying to help a little bit. If the Senator will drop those last few words, I might agree to his amendment, because I think our amendment is consistent with the consent decree. But I may be overly interpreting. I don't know exactly what the sentiment is for ''or any court orders thereunder.'' But it might be hoped by the Teamsters, or something, they could go to court and find some court that would say, yes, the Federal Government should pay for a rerun election. That is not covered.

I might tell my colleague that I have done a little homework on this. The rerun is not covered by the consent decree. There certainly is no obligation for taxpayers to pay for reruns, which is not consistent with the statement of the Senator from Massachusetts. That, I think, is factual.

So my point is, if the Senator would delete those last few words ''or any court orders thereunder,'' I think I could accept his amendment.

Mr. KENNEDY. If there was any court order affecting the 1996 elections of Teamsters officers—I would like to try a short quorum call to make sure that would be language, which I think appears to be to the Senator's point, and I think it would meet the objectives. But maybe we could suggest a short quorum call to make sure that we have the language that conforms to both of our understanding.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE ELECTION IN LOUISIANA

Mr. WARNER. Mr. President, I was distressed yesterday to hear comments on the floor relative to the duty of the U.S. Senate under the U.S. Constitution to determine—and we have the sole authority under the Constitution to determine—the issues as relating to the presence or absence of that degree of fraud or other conditions that would affect the outcome of the election in Louisiana. The subject has been discussed many times on the floor.

As chairman of the Rules Committee, I have overall responsibility for the direction and the daily conduct of this investigation. I will later today either address the Senate or put in the RECORD a detailed accounting of everything that I, the staff of the committee, and others have done since the last time I reported to the Senate with regard to this very important case. But I wish to assure my colleagues that while I regret that the Democrats decided to walk out on the investigation that the Republican majority of the committee, and specifically myself, we have continued to fulfill what I and others regard as the bottom-line responsibility of the U.S. Senate, and that is to go and look at every reasonable source of potential evidence as it relates to fraud in this election. This has taken a great deal of time. I recognize that it has stressed the patience of many.

But if you look historically, as I have done, at comparable situations when the U.S. Senate has been faced with the election problems, this case thus far is relatively short in duration. Many have gone for as much as 18 months to over 2 years.

It is my hope and my expectation that we can conclude this work in a reasonable period of time. Under the leadership of our distinguished majority leader and, indeed, some on the other side of the aisle, we were very near to an agreement whereby both sides concurred that this matter could be concluded before late September—this month. That fell by the wayside, and I was then given the authority at long last, although I had asked a number of times—it had been denied by the Democrats—the authority to issue subpoenas. I received that authority from the committee. Subpoenas were promptly issued. And I went to Louisiana on two occasions and each time conducted 2 full days of hearings. I repeat, 2 full days; 4 full days thus far of hearings in Louisiana.

In response to those subpoenas, individuals without exception came in, some voluntarily. Those individuals responded in large measure to the best of their knowledge to each and every question. Some equivocated. That is true in any trial. I used to be an assistant U.S. attorney for 4 or 5 years, and I have tried many cases. But I can judge witnesses fairly well based on that experience. I say on the whole the witnesses were forthcoming in their oral testimony.

Likewise, we issued subpoenas duces tecum for records. We have in the possession of the Senate now some four to six cartons of records as a consequence of those subpoenas issued in August. Most of those records relate to the gambling industry, which, according to official records, put anywhere from $10 to $15 million into the elections taking place on December 5 or 6 of 1996 because there was a referendum that affected the gambling industry. They had a right to participate and contribute money to foster their interests in certain votes as related to the referendum.

But anyway, that is a voluminous amount of record material that must be gone over carefully by Senate staff and such other adjunct support as we can get from the GAO. Much to my disappointment, and despite the efforts of the distinguished majority leader, myself, and others, the FBI pulled out when the Democrats left. That left us short-handed in the nature of support. But we are doing our best. And despite the efforts of majority leader, myself, and others, the FBI still has not come in to give any further help.

All of this is to say the buck stops with me as the chairman. And I can, in clearest of conscience, report to my colleagues that I feel that the Rules Committee, its staff, and the Republican Senators participating are fulfilling the exact requirement placed upon us by the U.S. Constitution.

I urge that the Members of this body continue to allow that work to be done in an orderly fashion as best we can, given the extraordinary handicaps we have, both financial, time and staffwise, to do our work, to go over the records we have.

I announced in Louisiana it would be my judgment, subject to concurrence of other members of the committee, to have at least one more hearing, this time here in the Rules Committee room, at which time the gambling industry would be subpoenaed to come and explain in detail the voluminous amount of records we now have before us. We need to ascertain whether or not this sum of money, ranging from $10 million to $15 million, was expended in a proper way in accordance with Federal and State law, or in fact did some of it slip into areas which could have generated fraud and, indeed, affected the outcome of this election through fraud.

So, Mr. President, I see the majority leader now at this time and I, due to time constraints, have to stop my remarks, but I will put in the RECORD today, either orally or insert a more complete dissertation, exactly what we have done.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. LOTT. For the information of all Senators, our Democratic colleagues are objecting today to permission for two committees to meet during the pendency of this session. The Agriculture Committee began meeting at 9 a.m. this morning to discuss rural and agriculture credit issues. Yet, as a result of that objection, or the objection we heard on that committee meeting, they had to abruptly end their meeting at 11:30 this morning.

The Environment and Public Works Committee is scheduled to meet at 2 p.m. today, and I want to take some action here momentarily that will allow them to, in fact, begin their hearing to discuss the Superfund Cleanup Act. Permission for them to meet was also objected to by the Democrats. It is my understanding that prominent witnesses have flown in from all over the country to appear before the Environment and Public Works Committee to discuss this vital environmental issue, what can we do to reform Superfund so the lawyers don't clean up but we clean up hazardous waste sites across America in most every State in this Nation.

Included in the group that was to come to testify is the Governor of Nebraska. He is scheduled to be introduced momentarily by one of the Senators from Nebraska. That testimony would certainly be key with respect to the Superfund Act in that State.

The objection lodged by the Democrats would deny that meeting from taking place unless the Senate were to recess. I regret that the Senate must recess in the middle of the day while discussing a very, very important piece of legislation, the Labor and Health and Human Services appropriations bill. We were, I thought, committed to working together in completing the appropriations process, especially a bill like this. While there are still some amendments pending that are of great interest and perhaps even controversial, we have made progress, and I think we could finish it up tonight with a little effort.

Unfortunately, this objection will only delay the consideration and passage of the Labor, HHS appropriations bill. Our colleagues from the other side of the aisle have stated that ''there is no intention to interrupt the business of the Senate, which is to pass these appropriations bills. There is no one out there objecting to the work on those appropriations bills.'' Yet, the Democratic objection to the Environment Committee meeting today on Superfund in fact does interrupt the business of the Senate. I truly regret the action taken by our colleagues here today and hope this will not become a practice by Members on the minority side of the aisle.

Having said all of that, by consent a vote is scheduled at 4:30 p.m. today on the D'Amato amendment to the Labor, HHS appropriations bill, and I now ask unanimous consent the Senate stand in recess until 4:30 p.m. today.

Mr. DASCHLE. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, it is with great reluctance that we come to this point, but I think it is important for us to remember from where it is we have come and how it is we got here. I will not elaborate in the detail at this point except to say this:

This was a bipartisan investigation during the first phase. I recall to my colleagues during that phase we asked the same attorneys who were involved in the last contested election—that is, Senator FEINSTEIN and her opponent, Mr. Huffington—to examine the circumstances of this particular race. They did. They recommended a certain course of action, and the majority on the Rules Committee chose to ignore it.

They then set in motion a second phase for investigation. That investigation also was bipartisan. That investigation took the course of a couple of months and came back again on a bipartisan basis with recommendations that again were ignored by the majority.

It was with increasing frustration that Democrats warned our Republican colleagues that we could not tolerate this endless abrogation of the regular order, this bipartisan effort to come to some conclusion on this investigation.

With some reluctance, we continued to work and ultimately indicated that beyond the end of July we were simply not in a position to tolerate unnecessary elongation and the increasingly partisan nature of this investigation and put our colleagues on notice that it must end. We indicated that if it had not ended by the time we came back after the August recess, we would have no recourse but to add increasing pressure to the process to bring about some end.

Now, this may or may not bring about an end. I am disappointed and somewhat alarmed that the chairman of the Rules Committee has now announced further hearings and further efforts to prolong this—in my view, completely unnecessarily. It would be one thing if evidence had been produced to suggest in some way some wrongdoing on the part of Senator LANDRIEU, but that has yet to be produced. In fact, just the opposite. If any wrongdoing, anything related to wrongdoing has been found, it has been with regard to her opponent, Mr. Jenkins. That is where the wrongdoing becomes increasingly evident as we look closer and closer at this case.

So, Mr. President, I must say we will continue to insist that committees meet for no longer than 2 hours as long as this situation continues. If it takes a month, I will put my colleagues on notice that we will use this selective approach for committee meetings for however long it takes until it is resolved. We simply cannot tolerate the unnecessary and political effort to prolong this investigation further, and we have no other recourse but to take the action we have, and so for that reason I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. Mr. President, I want to make sure that the—first of all, I do not think——

Mr. DASCHLE. I do not intend to object to the unanimous-consent request propounded by the majority leader, and I apologize for it. I object to this process. I do not want to have my objection construed as an objection to the UC propounded by the majority leader.

Mr. LOTT. Mr. President, I regret that we have to take this action in order to get our business done on a very important environmental issue. This sort of selective hit certainly, I think, would not be in the best interests of the legislative process of the Senate. We want to get Superfund legislation considered by the committee to the floor. We want to hear from witnesses such as the Governor of Nebraska and citizens who are affected by this. It seems to me the normal way of doing business around here is that is allowed to happen.

Mr. President, the saber rattling has begun. After bipartisan cooperation by Senate Democrats and Republicans over the past several months, it seems as though the Democrats have now returned to the preening and posturing of politicians more interested in blocking and obstructing the other side than concern for the interests of the American people.

Senate Democrats have effectively withdrawn from the bipartisan spirit of negotiation and compromise that has been evidenced regarding the budget and tax bills recently enacted by the Congress. Mr. President, the minority is, in effect, threatening to shut down the effective operation of the Senate. Now, they can call it selective cooperation or some other slick phrase that seeks to skirt the truth of the matter, but the American people are too smart for these word games, or, in Washington speak, for deceptive political spin.

Let me state, positively, that we are more than willing to continue the spirit of bipartisanship to achieve significant accomplishments on subjects of importance to the American people. For example, we are more than willing to work through the Appropriations bills, through ISTEA, and through debate on the many other matters pending before the Senate. But it is going to take cooperation and good faith on both sides, including the Members of the minority.

That good faith and cooperation is now missing on the part of the minority. The subject of the investigation into the election in Louisiana involves a duty of the Senate—of every Member of the Senate—to fully, thoroughly,

and completely investigate the conduct of such elections where the integrity and result of the election is legitimately called into question. The minority is refusing to allow—in fact, is actively obstructing—the Senate from conducting a thorough and complete investigation of the election in Louisiana.

If the minority wishes to prevent the Senate from living up to its duty regarding this election contest, and wishes to prevent the Senate from considering these important matters that I have noted and to shut down the Senate, then the minority must assume the responsibility for the consequences. Mr. President, good faith and cooperation is a two-way street. We believe that it is important to conduct and complete this election investigation in a thorough and complete manner. We are bound and determined that the investigation will be completed despite obstructionist tactics. I urge the minority to recognize the importance of this subject and the essential place that good faith plays in this legislative process. I urge the minority to assist us in completing this important investigation and to work together with us in good faith to address the many other subjects which are important to the American people.

I will sum it up this way. This is not the way to get the investigation by the Rules Committee concluded. In fact, it will cause difficulty and will probably delay it. The goal is not—there is no way we could just say, OK, it is over right now. The intent of the chairman is to have a hearing, to see what evidence they have found during the August recess, and I presume to have a meeting at some point to decide what action, if any or none, is to be taken. We will conclude this. We have had to proceed, frankly, without the cooperation of the Democrats. I have been in Congress 25 years. I have never, never, ever before seen one party or the other, either party, walk out on a committee's investigation or activities, even though there have been many, many investigations, several in which I was involved.

When I can look my colleagues in the Senate and the American people in the eye and say we have looked at this and we have found out as best we could—with the lack of help from the FBI, for instance, in most instances—we have concluded what happened or did not happen, and we in good conscience can say that, when I can do that, then we will conclude it. I can't do that right now.

But rather than engaging in extended debate at this time, there will obviously be other opportunities to do that and——

Mr. WARNER. Mr. President, could I have, say, a minute and a half?

Mr. LOTT. Mr. President, I will yield the floor at this point, but I do hope we can be brief so we can get the committee started.

Mr. WARNER. I will be brief. I thank the majority leader. I thank both leaders.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Virginia.

Mr. WARNER. I want to assure the Senate that I said in Louisiana, as I concluded the second hearing—and we had a total of 4 days of hearings—it would be my intention to come back and recommend to the Rules Committee and the leadership of the Senate that I have another hearing, at which time we will assess in specific the voluminous amount of record material now in our possession from the gambling industry and that within a period of perhaps a week after that I would schedule a second meeting, at which time I would give to the full Committee on Rules all of the evidence, my own assessment, and then entertain such resolutions as I or other members may wish to submit.

That I think can be done within a 3-week period of time, as I roughly outlined this morning to my distinguished leader. But I decided on that schedule 10 days ago.

Now, I say to you that thus far there has been no evidence which, in the judgment of this Senator, has impugned Senator LANDRIEU, but that is not the underlying issue. It is whether or not there were other factors in this election which could have affected the outcome as a consequence of criminal fraud. And I have said, much to the discouragement of many, that thus far, after the first hearing in Louisiana, there was no body of evidence which I felt could meet that burden.

I cannot make the same statement after the second hearing in Louisiana, because I haven't had the opportunity to assess four boxes of information. But we are proceeding, although handicapped, as expeditiously as we can. I have always been absolutely objective and fair about my pronouncements in this case and my assessment of the evidence. But until such time as we have looked in every area where potentially that quantum of fraud which could have affected the outcome of the election might have occurred, I cannot say this investigation would be complete. I do believe the work that needs to be done under my leadership can be concluded in the third week of September.

RECESS

Mr. LOTT. Mr. President, I renew my request that the Senate recess until the hour of 4:30.

There being no objection, the Senate, at 2:12 p.m., recessed until 4:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. HAGEL].

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1079, AS MODIFIED

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that Senators STEVENS and GRAMS be added as cosponsors to amendment No. 1079 to S. 1061.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I ask unanimous consent I be permitted to speak for up to 3 minutes on the pending D'Amato amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I support the amendment by Senator D'AMATO to add funding for the support services for seniors to the additional funding. They perform a very vital service as places for seniors to gather and to have their meals and to carry out the purposes of the legislation to improve the quality of life in the golden years; and especially in the context where senior benefits have come under such attack, so much concern that I heard, for example, in my travels through Pennsylvania, where there is concern about the solidity of Social Security and what is happening with Medicare. I believe it is a wise course to make an allocation from administrative costs across the board, to add the funding in the D'Amato amendment.

We have funded, last year, some $300,556,000. The administration made a request to cut that funding to $291,375,000. Our Senate markup, agreed to by Senator HARKIN and myself in our committee and in the full committee, was $305,556,000. So, instead of dropping the amount by more than $9 million as the administration had requested, we put an additional $5 million in. On reflection, hearing the arguments of the Senator from New York, Senator D'AMATO, I think that the addition of this $40 million is well placed, so I lend my voice in support of the pending amendment.

Mr. President, I note the presence of the Senator from New York on the floor. I see him reaching for the microphone.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, let me thank the chairman of this committee, Senator SPECTER. As I indicated before, this is a most difficult, difficult task, the management of scarce resources for Labor, Health, and Human Services, with the demands from the various communities for additional funding for medical research, the scarceness of resources, and the difficult time in the allocations. His support is greatly welcomed in this area. I am deeply appreciative.

Mr. GREGG. Mr. President, as Chairman of the Aging Subcommittee, I have spent a great deal of time concentrating on how to improve the ways the nutrition programs and senior services that are part of the Older Americans Act. I appreciate the work of the Senator from New York on this related funding issue.

In March 1995, I was pleased to have New Hampshire meals provider Debbie Perou-Hermans come to Washington to testify before the Aging Subcommittee; she emphasized the role these programs play for our seniors in New Hampshire and across the Nation. I also know that what we accomplish through the funds spent on other senior services—such as supporting congregate centers, transportation services, and health programs and counseling—is vital to the meeting the requirements of this population.

I think it is important to note, in addition, that this program has several other important qualities: The Older Americans Act requires the States to invest in these critical services; it has a great track record for leveraging private funds; and it generally makes its services available to all seniors, many of who are suffering from the challenges of social isolation, not just those in financial need. Need wears many faces in America.

I believe that we should work hard to ensure that the benefits are maximized through more flexibility in the funding of needed services, to be certain that the decisions about how and where these dollars are being spent are made at the State and local level. That will be the goal of the reauthorization bill that I am assembling which will be based on the bill I introduced in the 104th Congress.

However, I would like to quickly ask a question of my colleague from New York, Senator D'AMATO. You stated in your introductory remarks that your goal is to increase the availability of services to our seniors through the infusion of this additional $40 million. But I do not note any specific assignment of these funds. Would the Senator clarify again for me his intention to ensure that these dollars are spent on services that are proven to be effective and efficient, and not to pad the administrative accounts over at the Administration on Aging, or to allow them funds to try new things?

Mr. D'AMATO. I would like to assure the Senator from New Hampshire that my intention is to put this $40 million in to those services that we know are making the lives of our seniors healthier and more independent. Indeed, at the same time this amendment seeks to bring more resources into effective services for the elderly, it also reduces funding from administrative accounts. I share the Senator's interest in both getting needed services to our seniors and in reducing overhead costs.

Mr. GREGG. Then I am pleased to have the opportunity today to support the Senator from New York's increase in funding to the services provided by the Older American's Act.

Mr. SPECTER. Mr. President, I think we are ready to proceed now to the vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York, amendment No. 1079, as modified.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska [Mr. MURKOWSKI] is necessarily absent.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Ohio [Mr. GLENN] are necessarily absent.

The result was announced, yeas 97, nays 0, as follows:

[Rollcall Vote No. 216 Leg.]

YEAS—97

Abraham	Feingold	Lugar
Akaka	Feinstein	Mack
Allard	Ford	McCain
Ashcroft	Frist	McConnell
Baucus	Gorton	Mikulski
Bennett	Graham	Moseley-Braun
Biden	Gramm	Moynihan
Bond	Grams	Murray
Boxer	Grassley	Nickles
Breaux	Gregg	Reed
Brownback	Hagel	Reid
Bryan	Harkin	Robb
Bumpers	Hatch	Roberts
Burns	Helms	Rockefeller
Byrd	Hollings	Roth
Campbell	Hutchinson	Santorum
Chafee	Hutchison	Sarbanes
Cleland	Inhofe	Sessions
Coats	Inouye	Shelby
Cochran	Jeffords	Smith (NH)
Collins	Johnson	Smith (OR)
Conrad	Kempthorne	Snowe
Coverdell	Kennedy	Specter
Craig	Kerrey	Stevens
D'Amato	Kerry	Thomas
Daschle	Kohl	Thompson
DeWine	Kyl	Thurmond
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Warner
Dorgan	Leahy	Wellstone
Durbin	Levin	Wyden
Enzi	Lieberman	
Faircloth	Lott	

NOT VOTING—3

Bingaman	Glenn	Murkowski

The amendment (No. 1079), as modified, was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SPECTER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1071

Mr. KERREY. Mr. President, I believe that in order to achieve a goal, we must set the goal, commit the necessary resources to reaching the goal, and establish a method for measuring our progress toward that goal. Voluntary national testing would enable us to reach our goal of raising the achievement levels of America's children.

I oppose the Coats Amendment because it deprives parents, school administrators, teachers, and students of the information needed to continue the work of constructive education reform. Funding for the development, planning, implementation, and administration of voluntary national testing for individual students in mathematics and reading is important for several reasons. Requiring a Federal statute would impede cooperative efforts to ensure that children in every State have the necessary knowledge and skills to be competitive in today's highly mobile and globally conscious society.

Put simply, we need voluntary testing because we cannot ascertain where we are going if we do not know where we are.

Parents need to know how their child's educational achievement level in reading and mathematics compares with that of other children nationwide. Because families are relocating with increasing frequency these days, children need to feel confident that they can perform at a consistent level of achievement even though they may change school districts. These tests would empower parents by providing them with the same information that Members of Congress receive from National Assessment of Educational Progress. Parents deserve to know this information so that they can make the best decisions regarding their child's well-being. Also, there is considerable public support for national testing. A recent Phi Delta Kappa/Gallup poll showed that 67 percent of Americans favored using standardized national tests to measure the academic achievement of students.

Furthermore, there is a demand for the tests among teachers, principals, State school officials, and school boards. States and school districts with over 20 percent of fourth- and eighth-graders in the Nation have committed to using the tests. Let me stress that committing to voluntary national testing does not mean committing to a national curriculum. Local education authorities will determine how to use the results. The tests simply give them the tools to do their jobs better.

Mr. President, we in Congress should be doing all that we possibly can to ensure that America's children have the very best opportunity to excel in a technologically advanced 21st century. But we have to know where our children stand so that we can move forward. Research has shown that high academic standards generate high academic performance. Our children deserve no less.

Mr. DOMENICI. Mr. President, I rise in support of the bill, S. 1061, the Labor, Health and Human Services, Education and related agencies appropriations bill for fiscal year 1998.

The bill provides $236.4 billion in new budget authority and $188.6 billion in new outlays for programs of the Departments of Labor, Health and Human Services, and Education and related agencies.

When adjustments are made for prior-year outlays and other completed actions, the bill as adjusted totals $286.3 billion in budget authority and $285.2 billion in outlays for fiscal year 1998.

The committee-reported bill is within the subcommittee's revised 602(b) allocation just filed with the Congress' return.

There are several items for which the Senator from New Mexico would like to express appreciation. One item is continued funding for Hispanic Serving Institutions. With a slight increase over the 1997 level, the bill retains this program as separate from the Strengthening Institutions program. In addition, I appreciate the committee's willingness to continue funding PATH grants for the homeless.

I continue to be concerned about the practice of providing a $300 million contingency fund for LIHEAP that must be designated as emergency spending to be released. These expenses, in most cases, can be anticipated and should be addressed through the regular appropriations process.

I am especially pleased, that within the funding for the Centers for Disease Control, the committee has provided an $18 million increase for diabetes, including the establishment of a ''community-based intervention project in Gallup, New Mexico.''

As you know, this is an historic year in which we have set forth a plan to balance the budget in 7 years. The authorizing committees have completed a very difficult task in implementing this historic bipartisan budget agreement. I am pleased that the Appropriations Committee is attempting to live within funding and priority proposed in this agreement.

A concern I continually have, is the reduction of mandatory spending within appropriation bills. When mandatory savings are included in appropriations bills, it is generally to offset discretionary spending, instead of deficit reduction. In particular, the subcommittee has reduced the cap on the Social Services block grant by $255 million for fiscal year 1998.

Overall, I am supportive of the work of the committee and I urge my colleagues to support this bill.

Mr. President, I ask unanimous consent that a table displaying the Budget Committee scoring of the bill be placed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

S. 1061, LABOR-HHS APPROPRIATIONS, 1998, SPENDING COMPARISONS—SENATE-REPORTED BILL

[Fiscal year 1998, in millions of dollars]

	Defense	Non-defense	Crime	Mandatory	Total
Senate-Reported Bill:					
Budget authority		79,558	144	206,611	286,313
Outlays		75,926	65	209,167	285,158
Senate 602(b) allocation:					
Budget authority		79,558	144	206,611	286,313
Outlays		76,009	65	209,167	285,241
President's request:					
Budget authority		73,025	60	206,611	279,696
Outlays		74,571	48	209,167	283,786
House-passed bill:					
Budget authority		79,869	144	206,611	286,624
Outlays		75,935	64	209,167	285,166
SENATE-REPORTED BILL COMPARED TO:					
Senate 602(b) allocation:					
Budget authority					
Outlays		−83			−83
President's request:					
Budget authority		6,533	84		6,617
Outlays		1,355	17		1,372
House-passed bill:					
Budget authority		−311			−311
Outlays		−9	1		−8

S. 1061, LABOR-HHS APPROPRIATIONS, 1998, SPENDING COMPARISONS—SENATE-REPORTED BILL—Continued

[Fiscal year 1998, in millions of dollars]

Note: Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions.

Mr. SPECTER. If I may have the attention of my colleague.

The PRESIDING OFFICER. The Senate will be in order.

Mr. SPECTER. I believe Senator MCCAIN is prepared to offer an amendment.

Mr. MCCAIN. Mr. President, may I inquire of the distinguished managers of the bill, do they intend to dispose of the pending amendment, or is it agreeable to them to set aside the pending amendment for the purpose of proposing an amendment?

Mr. SPECTER. Mr. President, I ask unanimous consent that the pending amendment be set aside so that the Senator from——

Mr. NICKLES. Reserving the right to object, since that is my amendment.

I ask the Senator, you want unanimous consent to set our amendment aside for how long?

Mr. SPECTER. For the Senator from Arizona to present his amendment.

Mr. NICKLES. How long would that take?

Mr. MCCAIN. I do not know, since I do not believe that the amendment will be agreed to by some Members.

Mr. NICKLES. Then I will object, with great respect for my friend and colleague from Arizona, because I think we are going to need to dispose of the amendment that I have offered. Senator KENNEDY has offered a second-degree amendment. We have talked about it. We negotiated about it. We tried to figure out what it would mean. We keep getting different opinions.

So my guess is, I think we will have to at some point move to table Senator KENNEDY's amendment, find out where the votes are, and dispose of my amendment. I would hate to have to wait longer and longer. So I would just as soon move ahead with our amendment.

Mr. SPECTER. Mr. President, I had suggested setting aside the amendment to move to Senator MCCAIN on the theory a little more time might find some resolution. But if the Senator from Oklahoma thinks not, it is his prerogative to proceed with his amendment.

Mr. NICKLES. How long would it take?

Mr. MCCAIN. In response to the Senator from Oklahoma, I am not sure how long it would take because I am not sure how strong the disagreement would be with the amendment.

AMENDMENT NO. 1082

Mr. NICKLES. Mr. President, I love my colleague from Arizona. And I think my amendment is somewhat the same. I thought maybe we would be able to dispose of our amendment in a short period of time and have a clear vote on our amendment that would try to make sure that taxpayers would not have to pay for the Teamsters' election twice.

Senator KENNEDY came up with a very clever amendment, and I am still trying to figure out what the net impact would be. I still do not know. I have the greatest respect for my colleague. That is one of the reasons I am not sure I want to agree to his amendment. I have a great desire to work with my colleague from Massachusetts, but in the last 2½ hours I still have not been able to determine, if we adopted his second-degree amendment, who would pay for the Teamsters' election.

Therefore, Mr. President, I think, after consulting with others, that I will debate the Kennedy amendment. At some point I will move to table the Kennedy amendment. Then we can dispose of our amendment and proceed to the amendment of the Senator from Arizona and dispose of the bill.

Mr. GRAMM. Can we get a time limit on the debate before the tabling motion?

Mr. NICKLES. I am prepared to move to table the amendment. I would like to speak for a few minutes, Senator KENNEDY would probably like to speak for a few minutes, and the Senator from Texas probably would like to speak for a few minutes. I will not move to table at this point, but it is my intent to move forward rather expeditiously to bring this to closure.

Mr. President, let me make a couple comments.

Mr. President, is our amendment pending before the Senate?

The PRESIDING OFFICER. The amendments are pending in the first and second degree.

Mr. NICKLES. Mr. President, for the information of our colleagues, so everyone can understand what the Nickles amendment is and what the Kennedy amendment is—and we will be voting on a motion to table the Kennedy amendment and, hopefully, a motion on the underlying Nickles-Jeffords amendment.

The Nickles-Jeffords amendment is this: Taxpayers should not have to pay for the Teamsters' election twice.

Mr. President, in 1989, the consent decree said that there will be an election in 1991 and said that the Teamsters would pay for it. They did. They had a successful election. It had oversight and management by the Government, but it was paid for by the Teamsters. It was deemed to be a good election.

The 1996 election had oversight and management by the Federal Government, and it was also paid for by the Federal Government. The overseer of the election, though, said there was some fraud, said there was some corruption, and said in her opinion we needed to have a new election. She has

now petitioned a judge, and the judge will be ordering a new election.

My point being, it is not the taxpayers' fault that there was fraud. That came from the Teamsters. I do not have any qualm on who is elected or who is not elected. That is not my issue. Somebody, I think, said, ''You're trying to influence an election.'' Far from it. That is not my decision. My decision is to protect taxpayers. Taxpayers should not have to pay for it again.

The estimates of the cost are $22 million. I heard subsequent to that that it will be well over $22 million. I heard estimates up to $28 million, $30 million. My point is, we should not have to pay for it again. We paid for it once. It was not U.S. taxpayers that had the corruption. That happened to come from within the union. They hired some consultants, and they funneled money to various campaigns. We should not have to pay for that. That is not the taxpayers' fault.

So what would our amendment do? Our amendment basically says you can have a rerun election and, if the Teamsters do not have the money, the Federal Government can pay for it; just that the Federal Government has to be paid back.

So to me it is eminently fair. It does not have any influence, saying, ''This group is favored over another group.'' It does not say anything in the wording—my colleague from Massachusetts said this has something to do with the UPS strike. That is totally hogwash. There was an abuse in dealing with the UPS strike. That was the fact that the overseer knew there was corruption in the election, knew it during the strike, but did not let the rest of the country know. This is one of the most important strikes, but that does not have anything to do with it.

My point being, if there is another election, let the Teamsters pay for it. These happen to be individuals who make good money. Almost all elections in the country are paid for, if you are talking about union elections, are paid for by the union. And they should be paid for by the union. This is not that big a deal. There are 1.4 million members. I think a little less than 500,000 people voted in the last election. I think they can pay for it. The average payroll of the Teamsters can well afford this, so they should pay for it. If they do not have the money, the taxpayers can pay for it, and the taxpayers can be paid back with interest. It is only fair.

Is it consistent with the consent decree of 1989? Yes, it is. The consent decree of 1989 said that the Teamsters would pay for the 1991 election and that the taxpayers would pay for the 1996 election. It did not say taxpayers pay for a 1996 rerun if there is corruption in the election.

Some people would like—and I believe Senator KENNEDY's position would be: Well, let's leave that up to a judge. We will let a judge decide whether taxpayers have to pay for it or not. The consent decree was silent. It didn't say who would have to pay for a rerun if there's corruption in the election.

I want to eliminate the question mark. I want to make sure that taxpayers do not pay for it. It is that simple. Why leave it to the determination of a judge? I do not think the judge has—frankly, if the judge reads the consent decree, there is nothing in the consent decree that would indicate taxpayers should pay for a 1996 rerun. But why leave it ambiguous? Let us just say, wait a minute, if we are going to have a rerun, fine, let the Teamsters pay for it, and, if necessary, if they do not have the money, the U.S. taxpayers pay for it, but they have to be repaid.

I think our amendment is eminently fair. I wish my colleague from Massachusetts had not second-degreed it. It is confusing. His amendment looks innocuous, but we do not want to turn it over to the courts. Therefore, at the appropriate time, after a couple of our colleagues have spoken on the amendment, I will move to table the Kennedy amendment.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we are mindful now that we are only a few short days from the time that the UPS strike was resolved and settled, and settled in a way which benefited many thousands of workers. There are 186,000 workers that were involved, and there was important progress made in the areas of pensions and part-time work. There was great progress made in a number of different areas which we may or may not have an opportunity to discuss here this evening.

But, quite frankly, Mr. President, I doubt whether this amendment would be before us if we had not seen the success of the Teamsters as a result of a collective-bargaining process. We saw 15 days where the Nation was focused on the issue about whether the workers of UPS were going to participate in the extraordinary kinds of successes that UPS was involved in. Americans around the country responded to the fact that many of those that had been on part-time were not having part-time mortgages, part-time payments in terms of food bills, part-time payments in terms of children's clothing bills. Finally, the UPS and the Teamsters worked out an agreement. It was important for those working men and women.

There are some here, some here in the Senate who just cannot stand the fact that workers were able to have their rights considered and to have their rights resolved in a positive and constructive way. And there are those who just want to somehow get back at these workers, somehow get back at them. I believe here we are seeing some attempt to try to do so by the mischievousness of this particular amendment.

The amendment which I have proposed is an amendment to the Nickles amendment that does not require the American taxpayers to pay. The Senator from Oklahoma believes that the judge does not have the authority to require the payment for the election by the taxpayers. All the amendment that I have offered is saying is that if the consent agreement does not require it, it does not have to be expended; if it does require it, we are not going to take any action that is going to interfere with a judicial process and a consent agreement that was signed under the Bush administration, was initiated by a Republican, Mr. Giuliani, in New York, was ratified by the Attorney General, Mr. Thornburgh, who is on record in strong support of this agreement.

This agreement is still applicable. As a matter of fact, the respondents are required, under the Southern District Court, to file their briefs on September 19—on September 19. This is a court order that is in effect at the present time. All we are saying in support of the amendment that I have offered is, let us not interfere with the court order that was established in 1989 that was agreed to by the participants. It is part of a judicial process and procedure.

What we are basically asking, under the Nickles amendment, is that we are going to interfere with a legitimate judicial procedure. All my amendment says is, let the judicial procedure flow as it was designed and agreed to at an earlier period of time. That is the extent of my amendment. We are not requiring, in my amendment, that taxpayer money be used. We are not saying that it will not be used. We are saying, whatever the judge, under that consent agreement in 1989, understood that agreement to be, that we will not interfere with it.

But that is not satisfactory to Senator NICKLES. He wants to rig, evidently, or change the consent agreement. We believe that the consent agreement ought to be maintained for the reason that consent agreements are put into place and agreed to by the different parties. When the consent agreement goes in and the different parties agree, we do not see that they agree on one day and the next day we are going to have interference with that particular agreement. That is really what is at issue.

Here is Rudolph Giuliani, in 1988, saying, ''Today the U.S. Government is bringing a lawsuit to attack and reverse, once and for all, a major American scandal.'' This is not an issue that is just brought up today. This has been the result and consent agreement from a long, long history which I reviewed earlier in the debate.

Richard Thornburgh said, ''This settlement, which union leaders agree to today, culminates 30 years of efforts''—30 years of efforts—''by the Department of Justice to remove the influence of organized crime within the

Teamsters Union,'' and then indicates support for it. Thirty years of effort and the consent agreement in 1989.

We have seen a continued consent agreement, as these cases are going on to the Southern District Court today. The briefs are required by September 19. So this issue is very much alive, Mr. President.

All we are saying in support of our amendment, which is basically an add-on to the Nickles amendment, all our amendment says is nothing in this section under the Nickles amendment shall be construed to apply to the expenditures required by the consent decree in the U.S. v. International Brotherhood. We do not say you are going to have to pay for them. We don't say you will have to pay part of them. We don't say that they are not going to or we are going to restrict the judge. That is effectively what we are basically attempting to do with this particular amendment.

Mr. President, I think there are strong reasons for accepting this amendment. I will speak just for a few more moments on this particular issue. Mr. President, as I mentioned, in 1988, the Justice Department under President Bush sued the Teamsters Union under the racketeering laws, and the U.S. attorney who prosecuted the case was Rudolph Giuliani, another Republican, who now, of course, is the mayor of New York City. In 1989, Mayor Giuliani negotiated a resolution to the suit with the Teamsters that imposed sweeping reforms on the union.

A critical part of the election reform was the supervision of all aspects of the union elections by a court-appointed election official. Thus, the consent decree establishes the position of election officer and gave the officer substantial authority to regulate the entirety of the electoral process. Under the consent order the expenses of the 1991 Teamster election were borne by the union itself, including the expenses of the election officer.

But the 1996 election was different as to that election. The consent order stated the union defendants consent to the election officer at Government expense to supervise the 1996 election. The election officer and all parties to the suit complied with this provision of the consent decree. The Republican refusal to appropriate funds for fiscal year 1996 for the Labor and Justice Department forced the election officer to seek a court order requiring the Justice Department to fund the critical preelection activities. The Justice Department and union joined in the election officer's request for that order which ultimately was granted in October of 1995. Ultimately, however, the funding was obtained and the election was conducted. Protests were filed with the election officer to resolve them and an opinion issued late last month. In that opinion, the election officer found that misconduct by consultants to one candidate required that the election be rerun. The officer specifically declined to find wrongdoing by any officer or member of the union and noted that President Carey had conducted himself throughout the investigation in a manner inconsistent with guilt.

So, there is a judicial finding and conclusion that there has been no conclusion to this current election and has not been certified and therefore the election officer maintains the jurisdiction.

In accordance with this decision, the election officer did not certify the 1996 election. She did, however, apply to the Federal court for an order requiring that the election be rerun. That application is pending. The parties' briefs will not be filed until September 19 and the court will not rule until after that time. The court may order that the election be rerun or it may not. It may require the Government to fund the election officer's supervision of the election or it may require the union to do so or it may require each party to bear some part of the cost. Let me repeat that: The court may order the election be rerun or it may not. It may require the Government to fund the election officer's supervision of that election or it may require the union to do so. Or it may require each party to bear some part of the cost. We do not know that. We do not know that. That still has to be resolved.

Under the Nickles amendment it would prejudge that. All we are trying to do is say we had the agreement in 1989. It is under active consideration before the Southern District Court of New York and we should do nothing that is going to affect that agreement which has been agreed to by all the principle parties and negotiated under the previous administration.

The point is we do not know how the court will rule. But this amendment would tell the court that regardless of its ruling the Government will not be permitted to fund the election, even if the consent order requires the Government to pay, this amendment will refuse to permit that. Thus the amendment would interfere with an ongoing judicial process.

That is, basically, the issue. Are we going to permit legislative interference in an ongoing judicial process? It is as simple as that. Moreover, the amendment would renege on an agreement that a Republican-controlled Justice Department entered into 8 years ago by repudiating part of that agreement. The amendment would order the Government to subject itself to a contempt proceeding, and that is an outrage and an untenable result.

Why do those on the other side of the aisle seek to achieve this result? It can only be because they want to punish the Teamsters Union for their tremendous success in the recent UPS strike. That is what is at the bottom of this, make no mistake about it. Does anybody think if they had not been successful in that strike we would be considering this here? It is a basic, fundamental assault on the fact that they were able to negotiate some protections for part-time workers and for pension rights for workers. There are those in this body and in this country that cannot stand that. They want to give those workers a comeuppance. That is really what is at issue here. That is what is being attempted, to try to interfere with this judicial process.

That strike resulted in significant improvements for 185,000 workers at UPS. It sensitized the entire Nation to the gross abuses in many work forces that forced hard-working men and women into part-time jobs with lower wages and lower benefits than they deserve.

Let me highlight a few of the achievements of the Teamsters in the UPS strike: 10,000 new full-time jobs by combining existing low-wage part-time positions. That is in addition to the full-time opportunities that are normally created through growth in the company, retirements or people leaving for other reasons. Pension increases that are the same or better as the increases the company had already said it would make, but under the Teamster pension plan, not a company-controlled pension plan. Under the Teamster's central pension fund, a UPS worker could retire at 30 years with a pension of $3,000 per month, 50 percent more than the current amount. Limits on subcontracting—to replace some contractors with UPS workers, so that as UPS grows, full-time UPS jobs grow as well. Wage increases of $3.10 an hour for full-time plus an extra dollar an hour for part-time workers. That may not sound like a lot to the Members of this body but that is important for working families. Safety protections for workers who handle heavy packages may not sound important to a lot of people around this body but that is important for a lot of workers who are handling those heavy packages. The list goes on, and the list goes on.

Our Republican colleagues seem to think that the Teamsters deserve to be punished for these gains and I think the union deserves praise.

Mr. President, I believe, for the reasons I have outlined here, this is a consent decree, that the consent decree is still active, that there is pending action that is before the Southern District Court, and the amendment which I introduced would effectively accept the Nickles amendment but it would indicate there would be no interference with any decision that is going to be made by the judge in that decree that will be forthcoming, and the outcome of which we do not know.

Let me mention, Mr. President, some of the observations of the Judge, David Edelstein, approving the consent decree.

Just over two months ago I signed a consent decree between * * * Teamsters and the government. The decree contains an acknowledgment by the Teamsters leadership that there are severe shortcomings in the way it has conducted its affairs in the past, and it embodies the standards by which the leadership of the * * * Union should conduct its affairs in the future.* * *

These goals alone, however, are merely statements of good intentions—and we all know where those can lead. Without a dedicated effort to put these ideals into practice, the good intentions will become empty promises and unfulfilled hopes. * * * The public has a significant stake in the outcome of the decree. The IBT exercises vast power and cuts across every segment of society—political, social, and economic. It affects every aspect of our lives. Such power must be insulated against corruption and criminal elements and must be reserved for legitimate use to achieve legitimate ends.

* * * The conditions that have necessitated and justified such unprecedented measures are extreme. The remedy therefore is necessarily extreme. The court expects that all parties involved—the union, the government, and the three individuals I am about to appoint—live up to the spirit and letter of the laws and Constitution of the United States as well as the consent decree.

Mr. SPECTER. Could we enter into a time agreement, say, with the vote at 6 o'clock?

Mr. KENNEDY. I do not expect we would go beyond 6 o'clock but I am reluctant just to enter into it at this time since there are Members that indicated to me they wanted to speak and indicated they would like to speak, but I don't anticipate we would go beyond 6 o'clock.

The PRESIDING OFFICER. The Senator from Massachusetts has the floor.

Mr. WELLSTONE. A point of inquiry.

Mr. KENNEDY. I yield for a question.

Mr. WELLSTONE. As I understand what the Senator from Massachusetts is saying in reply or in response to the Senator from Pennsylvania is that we want to try and finish but there are some other Senators that want to speak and the Senator is right, I would like to speak.

I think it is a shame we did not have an agreement. We should have. This is a very reasonable second degree, I think, but I want to make it clear to my colleague from Pennsylvania I would like to speak, and I can be relatively brief.

Mr. SPECTER. I make an inquiry as manager of the bill to see if we can move it along.

We have quite a number of amendments. I would like to speak for 5 minutes. If the Senator from Minnesota wishes to speak for 5 minutes, he can get a sequencing. It would be helpful.

Mr. GRAMM. I assume we will go back and forth?

Mr. SPECTER. And perhaps agree to limit speeches to 5 minutes, if that is acceptable.

Mr. KENNEDY. Mr. President, as I indicated, I have talked to some Senators who wanted to speak. I do not anticipate going beyond 6 o'clock. I cannot speak for them at the present time.

After Senator WELLSTONE speaks, I can make inquiries of the Senators and inform the Chair.

Mr. SPECTER. I thank my colleague from Massachusetts.

Mr. KENNEDY. So, here we have the Republican administration that is committed to this consent decree. We have the consent decree still active in the southern district court requiring the submission of various briefs, a judge that is going to make a judgment based upon those briefs, and the facts as have been found on the recent election. We do not know what the terms of the pronouncement is going to be in terms of the judge, and all we are saying in the Kennedy amendment is that we are not going to interfere with the judgments of that judge in fulfilling the consent decree requirements that were agreed to by all parties, that go back over a long period of time, some 30 years of involvement, and we are not going to prejudge that, tonight, to interfere with a judicial proceeding.

That is, basically, what the effect of the Kennedy amendment would be as a perfecting amendment to the Nickles proposal.

Mr. President, I find it difficult to see how a President of the United States, if this were to go through and to pass and to be actually accepted in the committee in the conference report, how a President of the United States could sign this appropriation that would have a legislative intrusion in terms of a consent decree that had been agreed to and honored by all of the parties.

It seems to me that this would be a clear interference by the legislative body into the judicial consent decree and would certainly be subject to a Presidential veto. It is of that importance and of that consequence. I hope my amendment will be agreed to. Just to repeat it, all we want to say is that nothing in this section—which would be the Nickles amendment—should be construed to apply to expenditures required by the consent decree. We are not saying what they may be, what they might not be, whether they would be or would not be. But all we are saying is that we would not interfere with the consent decree. It is as plain and as clear as can be, Mr. President. I hope the amendment will be accepted.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me review what the issue is before the Senate and make it clear that there is nothing confusing about the Kennedy amendment. The objective of the Kennedy amendment is to require the taxpayer to pay for yet another union election.

Now, let me go back to the facts and then delineate where I believe Senator KENNEDY drifts far afield from the facts. I also want to respond to this assertion about UPS, which borders on violating rule XIX of the U.S. Senate.

Now, first, let me begin with the consent decree. Because of corruption in the Teamsters, we entered into a consent decree which resulted in the taxpayers paying for the 1996 Teamsters election. The taxpayers spent $22 million. The person appointed to oversee the election, having been paid $300,000 to $400,000, a couple of weeks after it was known that we clearly had violations in the election, now, belatedly, has raised questions.

Now, my point and the point of the Nickles amendment is that we agreed to pay for the election, and we paid for the election. The point is that we did not get the election that we paid for. Perhaps the amendment of Senator NICKLES should demand that we get our $22 million back because the same corruption we were trying to stop apparently occurred again.

Now, nothing in the Nickles amendment interferes with the consent agreement, except that the Nickles amendment makes it clear that the Constitution of the United States does not give a judge the power of the Federal purse. The Nickles amendment says we paid for an election we didn't get, and we are not paying for another election. The judge can require another election, which I assume he will do. But under the Nickles amendment, he will have to require the Teamsters to pay for the election. We have already paid for one election and we didn't get it. I hope while he is at it, he will fire everybody who drew these salaries to oversee an election through which they slept.

Now, as for the UPS strike having anything to do with this amendment, that assertion violates rule XIX of the U.S. Senate. We are impugning the motives of people offering this amendment. If I stood up on the floor of the Senate and said that this amendment was offered by a Democratic Senator because the Democratic Party colluded with the Teamsters Union, I would be subject to rule XIX, and rightly so. I would never do that. And to come to the floor of the Senate and suggest that Senator NICKLES' amendment has anything to do with anything other than stopping the purchase of another election when we didn't get the first one we paid for is outrageous. I was on the verge of raising rule XIX on that assertion. I think it assaults the dignity of the Senate to try to impugn the motives of people who are offering serious amendments.

Now, with regard to the judge, the Nickles amendment doesn't restrict the judge. The judge can order a new election; he can fire the people who didn't do their jobs the first time; and the judge can set out the parameters of the new election. But under the Nickles amendment, the judge cannot say to the taxpayer: You already paid for an election you didn't get and we are going to make you pay for another election.

All the Nickles amendment does is assert the power of Congress to expend money. It says to the judge and the courts that we are passing a law that says we already paid for our election and any future election will have to be reimbursed. The cost that the Federal taxpayer should incur in overseeing that election will have to be reimbursed by the beneficiaries, the members of the union, who, hopefully, will get an honest election in the future.

We had a consent decree; the Federal Government has lived up to the consent decree. We spent $22 million for an

election that we did not get. We were supposed to have gotten an honest election, but apparently did not. The question is: Are we going to do it again? I think it is a very clear vote.

We attempted to have an honest election once, which we did not get, even after the taxpayer paid $22 million. Now the person who was given the responsibility of overseeing that election says that a fair election did not occur. Should we be forced to pay again? The Nickles amendment says no. I think the American people would say no.

So the Kennedy amendment puts this back in the hands of the court. And, basically, his argument is, let a Federal judge appropriate and expend another $22 million if he chooses. The Constitution is very clear about who has the power of the purse. The Nickles amendment, totally within the consent decree, simply says that we paid to have an honest election, but we didn't get what we paid for. Quite frankly, I would vote for an amendment that demanded our $22 million back. But the point is that the Nickles amendment simply says that if another election is ordered, which it almost certainly will be, the beneficiaries of the election pay for it. So it does not interrupt the consent decree.

We have lived up to our end of the bargain, but the participants in the election and the overseers did not live up to their end of the bargain. This is a question of whether you want the taxpayers to fund a second election when the first election was apparently fraudulent. The Nickles amendment says no; the Kennedy amendment says yes, but does it indirectly by saying let's let the judge take the rap for requiring us to pay for the election the second time.

I say this is an issue the Congress should decide. We have the constitutional responsibility to spend or not spend money. I say buying one election you didn't get is one too many. I support the Nickles amendment, and I hope people will vote to defeat—by voting to table—the Kennedy amendment so that we can vote on the Nickles amendment, which simply says that we paid for an honest election, we didn't get it, and we are not paying for a second one. That is the issue. It is as clear-cut as it can be, and hiding behind some black-robed official who does not have the inconvenience of having to run for reelection and having to answer to voters for spending their money, I don't think is a way the U.S. Senate, as the greatest deliberative body in the world, should be acting.

This is a clear-cut choice, and the choice is: No more money to pay for elections that don't seem to be held fairly.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, my colleague from Texas wants to focus on the black-robed judges, but I think his analysis is a bit ahistorical. Rudolph Giuliani, former U.S. attorney, 1988: ''To date, the United States Government is bringing the lawsuit to attack and reverse once and for all the major American scandal.'' Richard Thornburgh, Attorney General, March 14, 1989—not a black-robed judge: ''This settlement, which union leaders agreed to earlier today, culminates 30 years of efforts by the Department of Justice to remove the influence of organized crime within the Teamsters Union.''

This was an agreement with a Republican administration. The second-degree amendment here, the Kennedy amendment, simply says, nothing in this section shall be construed to apply to expenditures required by the consent decree in United States versus The International Brotherhood of Teamsters. My colleague from Oklahoma wants to say there isn't anything in his amendment that goes against this consent agreement. If so, this second-degree amendment should be acceptable. We should not even be having this debate.

Now, I heard what my colleague from Texas said about the need to not be personal. I won't be. Let me make a different kind of argument. When, all of a sudden and unrelated to the bill on the floor, there is an amendment that goes after a consent agreement that goes back to the actions of a Republican administration, and when that all-of-a-sudden move on the Senate floor follows only a few short weeks from a very inspiring and successful effort on the part of the Teamsters to collectively bargain, and when this effort, unrelated to the bill on the floor all of a sudden comes up just a few short weeks after many people in the country are saying, thank goodness there is a focus on trying to have full-time jobs as opposed to part-time jobs, thank goodness there is a focus on living-wage jobs, thank goodness those of us who are hard-pressed and struggling to earn a decent living and raise our children well are going to have a chance, I think this is the wrong time for such an extraordinary move.

I don't think we can decontextualize what we do on the floor of the Senate. It would be a little foolish to believe that, whatever the intentions are of colleagues, people in the country, many working families, union or nonunion, won't look upon this effort as just payback. That will be the perception. That is the way it looks in terms of the chronology of this. That is the way it looks in terms of the timeliness of this. That is the way it looks in terms of this action by the Senate, following up on the successful effort on the part of a union to bargain collectively.

Finally, once again, it is such an extraordinary move to go against an agreement that a Republican administration was a part of and to take this extraordinary, and I think really very imprudent, action. Senator KENNEDY's second-degree amendment is reasonable. It just says—and I will finish—nothing in this section shall be construed to apply to expenditures required by the consent decree. Whatever those expenditures are or are not, this amendment just says, look, we don't come out here on the floor—it is not in the dark of night, but all of a sudden—with this kind of major move, and I think this is an extremely reasonable second-degree amendment. I hope my colleagues will support it.

Mr. KENNEDY. Will the Senator yield?

Mr. WELLSTONE. I am pleased to yield.

Mr. KENNEDY. We have taken the time to go through the various aspects in the consent decree that was agreed to, the agreement, in terms of the allocation of resources, some of which was spelled out in the consent decree. Let me mention, reading specifically, and I will—I ask unanimous consent that the full consent decree be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[U.S. District Court, Southern District of New York, Order 88 CIV. 4486 (DNE)]

UNITED STATES OF AMERICA, PLAINTIFF, *v.* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL–CIO, ET AL., DEFENDANTS.

Whereas, plaintiff United States of America commenced this action on June 28, 1988, by filing a Complaint seeking equitable relief involving the International Brotherhood of Teamsters, AFL–CIO (hereinafter, ''the IBT''), pursuant to the civil remedies provisions of the Racketeer Influenced and Corrupt Organizations (''RICO'') Act, 18 U.S.C. §1964; and

Whereas, the Summons and Complaint have been served, answers filed, and pretrial discovery commenced by and between the parties; and

Whereas, plaintiff United States of America and defendants IBT and its General Executive Board, William J. McCarthy, Weldon Mathis, Joseph Trerotola, Joseph W. Morgan, Edward M. Lawson, Arnold Weinmeister, Donald Peters, Walter J. Shea, Harold Friedman, Jack D. Cox, Don L. West, Michael J. Riley, Theodore Cozza and Daniel Ligurotis (hereinafter, the ''union defendants'') have consented to entry of this order; and

Whereas, the union defendants acknowledge that there have been allegations, sworn testimony and judicial findings of past problems with La Cosa Nostra corruption of various elements of the IBT; and

Whereas, the union defendants agree that there should be no criminal element or La Cosa Nostra corruption of any part of the IBT; and

Whereas, the union defendants agree that it is imperative that the IBT, as the largest trade union in the free world, be maintained democratically, with integrity and for the sole benefit of its members and without unlawful outside influence;

It is hereby ordered and decreed that:

A. Court Jurisdiction

1. This Court has jurisdiction over the subject matter of the action, has personal jurisdiction over the parties, and shall retain jurisdiction over this case until further order of the Court.

2. Upon satisfactory completion and implementation of the terms and conditions of this order, this Court shall entertain a joint motion of the parties hereto for entry of judgment dismissing this action with prejudice and without costs to either party.

B. Duration

3. The authority of the court officers established in paragraph no. 12 herein shall terminate after the certification of the 1991 election results by the Election Officer for all IBT International Officers as provided in this Order, except as follows:

(1) The Election Officer and the Administrator shall have the authority to resolve all disputes concerning the conduct and/or results of the elections conducted in 1991 under the authority granted to them under paragraph 12(D) herein, and the Investigations Officer and the Administrator shall have the authority to investigate and discipline any corruption associated with the conduct and/or results of the elections to be conducted in 1991 under the authority granted them under paragraph 12 (A) and (C) herein, so long as said investigation is begun within six months of the final balloting.

(2) The Investigations Officer and the Administrator shall have the authority to resolve to completion and decide all charges filed by the Investigations Officer on or before the date on which the authority granted to them under paragraphs 12 (A) and (C) herein terminates the authority pursuant to subparagraph (3) below.

(3) The role and authority provided for in paragraphs 12 and 13 of this Order regarding the Investigations Officer and the Administrator and their relationship with the Independent Review Board shall terminate not later than nine (9) months after the certification of the 1991 election results.

(4) As used herein, the date referred to as ''the certification of the 1991 election results'' shall be construed to mean either the date upon which the Election Officer certifies the 1991 election results for all IBT International Officers or one month after the final balloting, whichever is shorter.

C. Status of the Individual Union Defendants

4. The union defendants herein remain as officers of the IBT, subject to all of the terms herein, including the disciplinary authority of the Court-appointed officers, described in paragraph 12(A) herein.

D. Changes in the IBT Constitution

5. The portion of Section 6(a) of Article XIX of the IBT Constitution that provides, ''Any charge based upon alleged conduct which occurred more than one (1) year prior to the filing of such charge is barred and shall be rejected by the Secretary-Treasurer, except charges based upon the non-payment of dues, assessment and other financial obligations,'' shall be and hereby is amended to provide for a five (5) year period, running from the discovery of the conduct giving rise to the charge. This limitation period shall not apply to any actions taken by the Investigations Officer or the Administrator.

6. Section 6(a) of Article XIX of the IBT Constitution shall be deemed and is hereby amended to include the following: ''Nothing herein shall preclude the General President and/or General Executive Board from suspending a member or officer facing criminal or civil trial while the charges are pending.''

7. Immediately after the conclusion of the IBT elections to be conducted in 1991, Section 8 of Article VI of the IBT Constitution shall be deemed and hereby is amended to provide that a special election be held whenever a vacancy occurs in the office of IBT General President, pursuant to the procedures described later herein for election of IBT General President.

8. Article IV, Section 2 of the IBT Constitution shall be deemed and is hereby amended to include a new paragraph as follows:

''No candidate for election shall accept or use any contributions or other things of value received from any employers, representative of an employer, foundation, trust or any similar entity. Nothing herein shall be interpreted to prohibit receipt of contributions from fellow employees and members of this International Union. Violation of this provision shall be grounds for removal from office.''

9. (a) The IBT Constitution shall be deemed and hereby is amended to incorporate and conform with all of the terms set forth in this order.

(b) By no later than the conclusion of the IBT convention to be held in 1991, the IBT shall have formally amended the IBT Constitution to incorporate and conform with all of the terms set forth in this order by presenting said terms to the delegates for a vote. If the IBT has not formally so amended the IBT Constitution by that date, the Government retains the right to seek any appropriate action, including enforcement of this order, contempt or reopening this litigation.

E. Permanent Injunction

10. Defendants William J. McCarthy, Weldon Mathis, Joseph Trerotola, Joseph W. Morgan, Edward M. Lawson, Arnold Weinmeister, Donald Peters, Walter J. Shea, Harold Friedman, Jack D. Cox, Don L. West, Michael J. Riley, Theodore Cozza and Daniel Ligurotis, as well as any other or future IBT General Executive Board members, officers, representatives, members and employees of the IBT, are hereby permanently enjoined from committing any acts of racketeering activity, as defined in 18 U.S.C. §1961 *et seq.*, and from knowingly associating with any member or associate of the Colombo Organized Crime Family of La Cosa Nostra, the Genovese Organized Crime Family of La Cosa Nostra, the Gambino Organized Crime Family of La Cosa Nostra, the Lucchese Organized Crime Family of La Cosa Nostra, the Bonnano Organized Crime Family of La Cosa Nostra, any other Organized Crime Families of La Cosa Nostra or any other criminal group, or any person otherwise enjoined from participating in union affairs, and from obstructing or otherwise interfering with the work of the court-appointed officers or the Independent Review Board described herein.

11. As used herein, the term, ''knowingly associating,'' shall have the same meaning as that ascribed to that term in the context of comparable federal proceedings or federal rules and regulations.

F. Court-Appointed Officers

12. The Court shall appoint three (3) officers—an Independent Administrator, an Investigations Officer and an Election Officer—to be identified and proposed by the Government and the union defendants, to oversee certain operations of the IBT as described herein. The parties shall jointly propose to the Court at least two persons for each of these three positions. Such proposal shall be presented to the Court within four weeks of the date of the entry of this Order, except that for good cause shown such period may be extended by the Court. Except as otherwise provided herein, the duties of those three officers shall be the following:

(A) DISCIPLINARY AUTHORITY.—From the date of the Administrator's appointment until the termination of the Administrator's authority as set forth in paragraph 3(3) herein, the Administrator shall have the same rights and powers as the IBT's General President and/or General Executive Board under the IBT's Constitution (including Articles VI and XIX thereof) and Title 29 of the United States Code to discharge those duties which relate to: disciplining corrupt or dishonest officers, agents, employees or members of the IBT or any of its affiliated entities (such as IBT Locals, Joint Councils and Area Conferences), and appointing temporary trustees to run the affairs of any such affiliated entities. The Investigations Officer shall have the authority to investigate the operation of the IBT or any of its affiliates and, with cause,

(i) To initiate disciplinary charges against any officer, member or employee of the IBT or any of its affiliates in the manner specified for members under the IBT Constitution and,

(ii) To institute trusteeship proceedings for the purpose and in the manner specified in the IBT Constitution.

Prior to instituting any trusteeship proceeding the Investigations Officer shall notify the General President of the Investigations Officer's plan to institute said trusteeship proceeding and the basis therefor and give the General President ten (10) days to exercise his authority pursuant to the IBT Constitution to institute such trusteeship proceedings. If the General President timely institutes such proceedings and/or a trusteeship is imposed, the Investigations Officer and the Administrator shall have authority to review any action thus taken by the General President and/or any trusteeship imposed thereafter and to modify any aspect of either of the above at any time and in any manner consistent with applicable federal law. If the General President fails to institute trusteeship proceedings within the ten-day period prescribed herein, the Investigations Officer may immediately proceed in accordance with the authority specified above.

When the Investigations Officer files charges, the following procedures shall be observed:

(a) the Investigations Officer shall serve written specific charges upon the person charged;

(b) the person charged shall have at least thirty (30) days prior to hearing to prepare his or her defense;

(c) a fair and impartial hearing shall be conducted before the Administrator;

(d) the person charged may be represented by an IBT member at the hearing; and

(e) the hearing shall be conducted under the rules and procedures generally applicable to labor arbitration hearings.

The Administrator shall preside at hearings in such cases and decide such cases using a ''just cause'' standard. The Investigations Officer shall present evidence at such hearings. As to decisions of the IBT General Executive Board on disciplinary charges and trusteeship proceedings during the Administrator's tenure, the Administrator shall review all such decisions, with the right to affirm, modify or reverse such decisions and, with respect to trusteeship proceedings, to exercise the authority granted above in this paragraph. Any decision of the Administrator shall be final and binding, subject to the Court's review as provided herein. For a period of up to fourteen (14) days after the Administrator's decision, any person charged or entity placed in trusteeship adversely affected by the decision shall have the right to seek review by this Court of the Administrator's decision. The Administrator shall also have the right to establish and disseminate new guidelines for investigation and discipline of corruption within the IBT. All of the above actions of the Administrator and Investigations Officer shall be in compliance with applicable Federal laws and regulations.

(B) Review Authority.—From the date of the Administrator's appointment until the certification of the IBT elections to be conducted in 1991, the Administrator shall have

the authority to veto whenever the Administrator reasonably believes that any of the actions or proposed actions listed below constitutes or furthers an act of racketeering activity within the definition of Title 18 U.S.C. §1961, or furthers or contributes to the association directly, or indirectly, of the IBT or any of its members with the LCN or elements thereof:

(i) any expenditures or proposed expenditure of International Union funds or transfer of International Union property approved by any officers, agents, representatives or employees of the IBT,

(ii) any contract or proposed contract on behalf of the International Union, other than collective bargaining agreements, and

(iii) any appointment or proposed appointments to International Union office of any officer, agent, representative or employee of the IBT.

In any case where the Administrator exercises veto authority, the action or proposed action shall not go forward. The Administrator, upon request of the IBT's General President or General Executive Board, shall, within three (3) days, advise the IBT's General President and/or General Executive Board whichever is applicable, of the reasons for any such veto. For a period of up to fourteen (14) days after the Administrator's decision, the IBT's President and/or General Executive Board shall have the right to seek review by this Court of the Administrator's decision. The Administrator may prescribe any reasonable mechanism or procedure to provide for the Administrator's review of actions or proposed actions by the IBT, and every officer, agent, representative or employee of the IBT shall comply with such mechanism or procedure.

(C) Access to Information.—(i) The Investigations Officer shall have the authority to take such reasonable steps that are lawful and necessary in order to be fully informed about the activities of the IBT in accordance with the procedures as herein established. The Investigations Officer shall have the right:

(a) To examine books and records of the IBT and its affiliates, provided the entity to be examined receives three (3) business days advance notice in writing, and said entity has the right to have its representatives present during said examination.

(b) To attend meetings or portions of meetings of the General Executive Board relating in any way to any of the officer's rights or duties as set forth in this Order, provided that prior to any such meeting, the officer shall receive an agenda for the meeting and then give notice to the General President of the officer's anticipated attendance.

(c) To take and require sworn statements or sworn in-person examinations of any officer, member, or employee of the IBT provided the Investigations Officer has reasonable cause to take such a statement and provided further that the person to be examined receives at least ten (10) days advance notice in writing and also has the right to be represented by an IBT member or legal counsel of his or her own choosing, during the course of said examination.

(d) To take, upon notice and application for cause made to this Court, which shall include affidavits in support thereto, and the opportunity for rebuttal affidavits, the sworn statements or sworn in person examination of persons who are agents of the IBT (and not covered in subparagraph (c) above).

(e) To retain an independent auditor to perform audits upon the books and records of the IBT or any of its affiliated entities (not including benefit funds subject to ERISA), provided said entity receives three (3) business days advance notice in writing and said entity has the right to have its representatives present during the conduct of said audit.

(ii) The Independent Administrator and the Election Officer shall have the same rights as the Investigations Officer as provided in sections (a), (b), (c) and (d) of A, herein.

(iii) The Independent Administrator, Investigations Officer and Election Officer shall each be provided with suitable office space at the IBT headquarters in Washington, D.C.

D. IBT Election.—The IBT Constitution shall be deemed amended, and is hereby amended, to provide for the following new election procedures:

(i) The procedures described herein shall apply to elections of the IBT's General President, General Secretary-Treasurer, International Union Vice Presidents, and international Union Trustees;

(ii) Delegates to the IBT International convention at which any International Union officers are nominated or elected shall be chosen by direct rank-and-file secret balloting shortly before the convention (but not more than six months before the convention, except for those delegates elected at local union elections scheduled to be held in the fall of 1990), and with all convention Candidate election voting by secret ballot of each delegate individually;

(iii) Delegates shall nominate candidates for eleven (11) Regional Vice Presidents, as follows: Three (3) from the Eastern Conference, three (3) from the Central Conference, two (2) from the Southern Conference, two (2) from the Western Conference, and one (1) from the Canadian Conference. In addition, there shall be nominated candidates for five (5) Vice Presidents to be elected at large. All duly nominated Vice Presidents shall stand for election conducted at local unions on the same ballot and time as the election of General President and General Secretary-Treasurer, as provided herein;

(iv) At such an International convention, after the nomination of International Union Vice Presidents and election of Trustees, all delegates shall then vote for nominees for the offices of IBT General President and Secretary-Treasurer;

(v) To qualify for the ballot for the direct rank-and-file voting for IBT General President, Secretary-Treasurer, and Vice President, candidates must receive at least five (5) percent of the delegate votes at the International convention, for the at large position, or by conference for regional positions, as the case may be;

(vi) No person on the ballot for the position of IBT General President may appear on the ballot in the same election year for the position of Secretary-Treasurer; and further no member shall be a candidate for more than one (1) Vice President position;

(vii) No less than four (4) months and no more than six (6) months after the International convention at which candidates were nominated, the IBT General President, General Secretary-Treasurer and Vice Presidents shall be elected by direct rank-and-file voting by secret ballot in unionwide, one-member, one-vote elections for each at large position, and conference wide, one-member one-vote elections for each regional position;

(viii) All direct rank-and-file voting by secret ballot described above shall be by in-person ballot box voting at local unions or absentee ballot procedures where necessary, in accordance with Department of Labor regulations; and

(ix) The current procedures under the IBT Constitution for filling a vacancy between elections in the office of General Secretary-Treasurer, International Trustee, and International Vice President shall remain in effect.

The Election Officer shall supervise the IBT election described above to be conducted in 1991 and any special IBT elections that occur prior to the IBT elections to be conducted in 1991. In advance of each election, the Election Officer shall have the right to distribute materials about the election to the IBT membership. The Election Officer shall supervise the balloting process and certify the election results for each of these elections as promptly as possible after the balloting. Any disputes about the conduct and/or results of elections shall be resolved after hearing by the Administrator.

The union defendants consent to the Election Officer, at Government expense, to supervise the 1996 IBT elections. The union defendants further consent to the U.S. Department of Labor supervising any IBT elections or special elections to be conducted after 1991 for the office of the IBT General President, IBT General Secretary-Treasurer, IBT Vice President, and IBT Trustee.

At the IBT 1991 International Convention, the delegates shall be presented with these aforesaid amendments for vote; provided further that nothing herein shall be deemed or interpreted or applied to abridge the Landrum-Griffin free speech right of any IBT officer, delegate or member, including the parties hereto.

(E) REPORTS TO MEMBERSHIP.—The Administrator shall have the authority to distribute materials at reasonable times to the membership of the IBT about the Administrator's activities. The reasonable cost of distribution of these materials shall be borne by the IBT. Moreover, the Administrator shall have the authority to publish a report in each issue of the *International Teamster* concerning the activities of the Administrator, Investigations Officer and Election Officer.

(F) REPORTS TO THE COURT.—The Administrator shall report to the Court whenever the Administrator sees fit but, in any event, shall file with the Court a written report every three (3) months about the activities of the Administrator, Investigations Officer and Election Officer. A copy of all reports to the Court by the Administrator shall be served on plaintiff United States of America, the IBT's General President and duly designated IBT counsel.

(G) HIRING AUTHORITY.—The Administrator, the Investigations Officer and the Election Officer shall have the authority to employ accountants, consultants, experts, investigators or any other personnel necessary to assist in the proper discharge of their duties. Moreover, they shall have the authority to designate persons of their choosing to act on their behalf in performing any of their duties, as outlined in subparagraphs above. Whenever any of them wish to designate a person to act on their behalf, they shall give prior written notice of the designation to plaintiff United States of America, and the IBT's General President; and those parties shall then have the right, within fourteen (14) days of receipt of notice, to seek review by this Court of the designation, which shall otherwise take effect fourteen (14) days after receipt of notice.

(H) COMPENSATION AND EXPENSES.—The compensation and expenses of the Administrator, the Investigations Officer and the Election Officer (and any designee or persons hired by them) shall be paid by the IBT. Moreover, all cost associated with the activities of these three officials (and any designee or persons hired by them) shall be paid by the IBT. The Administrator, Investigations Officer and Election Officer shall file with the Court (and serve on plaintiff United States of America and the IBT's General President and designated IBT counsel) an application, including an itemized bill, with supporting material, for their services and expenses once every three months. The IBT's

General President shall then have fourteen (14) business days following receipt of the above in which to contest the bill before this Court. If the IBT's President fails to contest such a bill within that 14-day period, the IBT shall be obligated to pay the bill. In all disputes concerning the reasonableness of the level or amount of compensation or expense to be paid, the Court and parties shall be guided by the level of payment as authorized and approved by the IBT for the payment of similar services and expenses.

(l) APPLICATION TO THE COURT.—The Administrator may make any application to the Court that the Administrator deems warranted. Upon making any application to the Court, the Administrator shall give prior notice to plaintiff United States of America, the IBT's General President and designated IBT counsel and shall serve any submissions filed with the Court on plaintiff United States of America, the IBT's General President and designated IBT counsel. Nothing herein shall be construed as authorizing the parties or the Court-appointed officers to modify, change or amend the terms of this Order.

G. Independent Review Board

Following the certification of the 1991 election results, there shall be established an Independent Review Board (hereinafter, referred to as the ''Review Board''). Said Board shall consist of three members, one chosen by the Attorney General of the United States, one chosen by the IBT and a third person chosen by the Attorney General's designee and the IBT's designee. In the event of a vacancy, the replacement shall be selected in the same manner as the person who is being replaced was selected.

(a) The Independent Review Board shall be authorized to hire a sufficient staff of investigators and attorneys to investigate adequately (1) any allegations of corruption, including bribery, embezzlement, extortion, loan sharking, violation of 29 U.S.C. §530 of the Landrum Griffin Act, Taft-Hartley Criminal violations or Hobbs Act violations, or (2) any allegations of domination or control or influence of any IBT affiliate, member or representative by La Cosa Nostra or any other organized crime entity or group, or (3) any failure to cooperate fully with the Independent Review Board in any investigation of the foregoing.

(b) The Independent Review Board shall exercise such investigative authority as the General President and General Secretary-Treasurer are presently authorized and empowered to exercise pursuant to the IBT Constitution, as well as any and all applicable provisions of law.

(c) All officers, member, employees and representatives of the IBT and its affiliated bodies shall cooperate fully with the Independent Review Board in the course of any investigation or proceeding undertaken by it. Unreasonable failure to cooperate with the Independent Review Board shall be deemed to be conduct which brings reproach upon the IBT and which is thereby within the Independent Review Board's investigatory and decisional authority.

(d) Upon completion of an investigation, the Independent Review Board shall issue a written report detailing its findings, charges, and recommendations concerning the discipline of union officers, members, employees, and representatives and concerning the placing in trusteeship of any IBT subordinate body. Such written reports shall be available during business hours for public inspection at the IBT office in Washington, DC.

(e) Any findings, charges, or recommendations of the Independent Review Board regarding discipline or trusteeship matters shall be submitted in writing to an appropriate IBT entity (including designating a matter as an original jurisdiction case for General Executive Board review), with a copy sent to the General President and General Executive Board. The IBT entity to which a matter is referred shall thereupon promptly take whatever action is appropriate under the circumstances, as provided by the IBT Constitution and applicable law. Within 90 days of the referral, that IBT entity must make written findings setting forth the specific action taken and the reasons for that action.

(f) The Independent Review Board shall monitor all matters which it has referred for action if, in its sole judgment, a matter has not been pursued and decided by the IBT entity to which the matter has been referred in a lawful, responsible, or timely manner, or that the resolution proposed by the relevant IBT entity is inadequate under the circumstances, the Independent Review Board shall notify the IBT affiliate involved of its view, and the reasons therefor. A copy of said notice shall be sent by the Independent Review Board, to the General President and the General Executive Board.

(g) Within 10 days of the notice described in paragraph (f) above, the IBT entity involved shall set forth in writing any and all additional actions it has taken and/or will take to correct the defects set forth in said notice and a deadline by which said action may be completed. Immediately thereafter, the Independent Review Board shall issue a written determination concerning the adequacy of the additional action taken and/or proposed by the IBT entity involved. If the Independent Review Board concludes that the IBT entity involved has failed to take or propose satisfactory action to remedy the defects specified by the Independent Review Board's hearing, after notice to all affected parties. All parties shall be permitted to present any facts, evidence, or testimony which is relevant to the issue before the Independent Review Board. Any such hearing shall be conducted under the rules and procedures generally applicable to labor arbitration hearings.

(h) After a fair hearing has been conducted, the Independent Review Board shall issue a written decision which shall be sent to the General President, each member of the General Executive Board, and all affected parties.

(i) The decision of the Independent Review Board shall be final and binding, and the General Executive Board shall take all action which is necessary to implement said decision, consistent with the IBT Constitution and applicable Federal laws.

(j) The Independent Review Board shall have the right to examine and review the General Executive Board's implementation of the Independent Review Board's decisions; in the event the Independent Review Board's decisions; in the event the Independent Review Board is dissatisfied with the General Executive Board's implementation of any of its decisions, the Independent Review Board shall have the authority to take whatever steps are appropriate to insure proper implementation of any such decision.

(k) The Independent Review Board shall be apprised of and have the authority to review any disciplinary or trusteeship decision of the General Executive Board, and shall have the right to affirm, modify, or reverse any such decision. The Independent Review Board's affirmance, modification, or reversal of any such General Executive Board decision shall be in writing and final and binding.

(l) The IBT shall pay all costs and expenses of the Independent Review Board and its staff (including all salaries of Review Board members and staff). Invoices for all such costs and expense shall be directed to the General President for payment.

(m) The Investigations Officer and the Administrator shall continue to exercise the investigatory and disciplinary authority set forth in paragraph 12 above for the limited period set forth in paragraph 3(3) above, provided, however, that the Investigations Officer and the Administrator may, instead, refer any such investigation or disciplinary matter to the Independent Review Board.

(n) The IBT Constitution shall be deemed and hereby is amended to incorporate all of the terms relating to the Independent Review Board set forth above in this paragraph. This amendment shall be presented to the delegates to the 1991 Convention for vote.

H. Indemnification

13. The IBT shall purchase a policy of insurance in an appropriate amount to protect the Administrator, the Investigations Officer, the Election Officer and persons acting on their behalf from personal liability for any of their actions on behalf of the IBT, the Administrator, the Investigations Officer or the Election Officer. If such insurance is not available, or if the IBT so elects, the IBT shall indemnify the Administrator, Investigations Officer, Election Officer and persons acting on their behalf from any liability (or costs incurred to defend against the imposition of liability) for conduct taken pursuant to this order. That indemnification shall not apply to conduct not taken pursuant to this order. In addition, the Administrator, the Investigations Officer, the Election Officer and any persons designated or hired by them to act on their behalf shall enjoy whatever exemptions from personal liability may exist under the law for court officers.

I. IBT Legal Counsel

14. During the term of office of the court-appointed officers, the IBT General President shall have the right to employ or retain legal counsel to provide consultation and representation to the IBT with respect to this litigation, to negotiate with the appropriate official and to challenge the decisions of the court-appointed officers, and may use union funds to pay for such legal consultation and representation. The Administrator's removal powers and authority over union expenditures shall not apply to such legal consultation and representation.

J. Non-Waiver

15. To the extent that such evidence would be otherwise admissible under the Federal Rules of Evidence, nothing herein shall be construed as a waiver by the United States of America or the United States Department of Labor of its right to offer proof of any allegation contained in the Complaint, Proposed Amended Complaint, declarations or memoranda filed in this action, in any subsequent proceeding which may lawfully be brought.

K. Application to Court

16. This Court shall retain jurisdiction to supervise the activities of the Administrator and to entertain any future applications by the Administrator or the parties. This Court shall have exclusive jurisdiction to decide any and all issues relating to the Administrator's actions or authority pursuant to this order. In reviewing actions of the Administrator, the Court shall apply the same standard of review applicable to review of final federal agency action under the Administrative Procedure Act.

L. Future Practices

17. The parties intend the provisions set forth herein to govern future ITT practices in those areas. To the extent the IBT wishes

to make any changes, constitutional or otherwise, in those provisions, the IBT shall give prior written notice to the plaintiff, through the undersigned. If the plaintiff then objects to the proposed changes as inconsistent with the terms and objections of this order, the change shall not occur; provided, however, that the IBT shall then have the right to seek a determination from this Court, or, after the entry of judgment dismissing this action, from this Court or any other federal court of competent jurisdiction as to whether the proposed change is consistent with the terms and objectives set forth herein.

M. Scope of Order

18. Except as provided by the terms of this order, nothing else herein shall be construed or interpreted as affecting or modifying: (a) the IBT Constitution; (b) the Bylaws and Constitution of any IBT affiliates; (c) the conduct and operation of the affairs of the IBT or any IBT-affiliated entity or any employee benefit fund as defined in ERISA or trust fund as defined by Section 302(c) of the Labor Management Relations Act, as amended; (d) the receipt of any compensation or benefits lawfully due or vested to any officer, member or employee of the IBT or any of its affiliates and affiliated benefit fund; or (e) the term of office of any elected or appointed IBT officer or any of the officers of any IBT-affiliated entities.

N. Non-Admission Clause

19. Nothing herein shall be construed as an admission by any of the individual union defendants of any wrongdoing or breach of any legal or fiduciary duty or obligation in the discharge of their duties as IBT officers and members of the IBT General Executive Board.

O. Future Actions

20. Nothing herein shall preclude the United States of America or the United States Department of Labor from taking any appropriate action in regard to any of the union defendants in reliance on federal laws, including an action or motion to require disgorgement of pension, severance or any other retirement benefits of any individual union officer defendant on whom discipline is imposed pursuant to paragraph 12 above.

P. Limits of Order

21. Nothing herein shall create or confer or is intended to create or confer, any enforceable right, claim or benefit on the part of any person or entity other than to the parties hereto and the court-appointed officers established herein. As to the undersigned defendants hereto, this order supersedes the order of the Court entered on June 28, 1988, as thereafter extended.

Q. Execution

22. Each of the undersigned individual defendants has read this order and has had an opportunity to consult with counsel before signing the order.

March , 1989.

DAVID N. EDELSTEIN,
U.S. District Judge.

Consented to: Benito Romano, United States Attorney, Southern District of New York, One St. Andrew's Plaza, New York, New York 10007, Attorney for Plaintiff, United States of America.

By: Randy M. Mastro, Assistant United States Attorney, Mudge Rose Guthrie, Alexander & Ferdon, 16 Maiden Lane, New York, New York 10038, Attorneys for Defendants IBT and its General Executive Board.

By: Jed S. Rakoff, James T. Grady, Esq., General Counsel, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, 25 Louisiana Avenue, N.W., Washington, D.C. 20001.

By: James T. Grady, Esquire.

Defendant William J. McCarthy;
Defendant Joseph Trerotola;
Defendant Joseph W. Morgan;
Defendant Arnold Weinmeister;
Defendant Donald Peters;
Defendant Walter J. Shea;
Defendant Harold Friedman;
Defendant Jack D. Cox;
Defendant Michael J. Riley;
Defendant Theodore Cozza;
Defendant Daniel Ligurotis.

Mr. KENNEDY. ''The union/defendants consent to the election officer, at Government expense, to supervise the '96 elections.''

And then it reviews this. It says ''at Government expense.''

If we are to take the Nickles—this is in the consent decree. This is not the judge reaching this. This is the Republican Justice Department, under Attorney General Thornburgh, agreeing to this, and where they had made that kind of commitment and agreement. All we are saying is, in any kind of new election, we don't know exactly what they are going to recommend, but we do not want to restrict or affect that consent decree by interfering with legislative action.

Mr. WELLSTONE. I say to my colleague from Massachusetts that I would agree. That is why I find it hard to understand why there can't even be an agreement here on the floor of the Senate because I think the position that the Senator takes is very reasonable, and I think it is important to have this consent decree as part of the Record for that very reason.

Mr. President, I will yield the floor, if my colleague wants to speak. If that is what he really wants to do, I am pleased to yield the floor.

Mr. SANTORUM. Mr. President, I have a question for the Senator from Minnesota. It is not about the subject matter at hand. It is about this rather disturbing assertion by the Senator from Minnesota and the Senator from Massachusetts about the motives behind the Nickles amendment. It is disturbing. And I think the Senator from Texas is right when he said that in fact this borders on a violation of rule XIX.

Let me make a statement. And then I would like the Senator to respond.

Mr. WELLSTONE. If the Senator will yield, why doesn't he put the question to me first?

Mr. SANTORUM. Let me put the information out, and then I would like the Senator to respond to it. I can do it in the form of a question. But the Senator from Minnesota makes the assertion that this comes right on the heels of a Teamsters strike when they were successful in negotiating some changes in their contract. The Senator talks about the chronology. Let's also talk about the chronology of when Barbara Zack Quindel, who is the overseer of the election, came out with her order following the strike. That didn't occur 3 months ago. That didn't occur 6 months ago. It occurred 3 or 4 weeks ago over the break. The first opportunity for us to address this issue is this bill.

To suggest that we somehow waited until after this Teamsters strike to do this is ridiculous. The timing is perfectly appropriate. It is appropriate because it is the first legislative opportunity to address this issue after the overseer ruled on the election. If we waited 6 months and there happened to be a strike and we happened to come forward with this after that successful strike by a union, then you can make the argument. But that is not what is happening here.

To suggest and imply and impugn the integrity of the Senator from Oklahoma and his motives I think is really below the dignity of this Senate given the chronology that the Senator from Minnesota is well aware of. I hope that given that knowledge—and maybe he did not have that knowledge—but given the knowledge that this in fact was right after this decision was handed down by the overseer of the election, and that this was in fact timely, and had nothing to do with the Teamsters strike, in fact one might add that the fact that Ms. Quindel sat on this report for a couple of weeks might have had something to do with the Teamsters strike. But that is not the issue here. What is at issue is the Senator from Oklahoma addressed this issue expeditiously right after the decision was made on the first legislative vehicle to do so. And I think any other construction of motivation really does not hold water very well.

So I would be pleased with a response, given that information.

Mr. WELLSTONE. I would be pleased to respond. I know the majority leader wants to respond.

First of all, if the Senator was listening carefully, I said, whatever the intention, it just seemed to me that it is hard contextually with what we do from what is happening outside the Senate. And I think it is a big mistake to do this. I think many people will view this as nothing less than an effort to retaliate.

That is my position. Whether or not I am right or wrong, I say to my colleague from Pennsylvania that the proof will be in the pudding. We will see how people in the country respond. We will see what interpretation people put on this. I think it is a big mistake. I think this is a real overreach.

As I tried to do in this debate, I went back through the history of this. I make it crystal clear. Richard Thornburgh, in this settlement of March 14, 1989, which union leaders agreed to earlier today, said culminates 30 years of efforts by the Department of Justice to remove the influence of organized crime within the Teamsters Union. We are saying in the second-degree amendment that nothing that we do should be construed to apply to expenditures.

Don't overreach, and don't take an imprudent action, and don't try to

overturn this. That is profoundly mistaken.

That is my argument. And that will continue to be my argument, irrespective of what some of my other colleagues believe.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I have never seen so many red herrings in my life. We should be flying a flock. This is not about the recent Teamsters strike at UPS, although clearly that strike injured millions of Americans and small businessmen and women. And I heard a lot of those concerns while I was home. I had a lot of calls in my offices pleading for help in some way. ''Please find a way to help end this strike because of what it is doing to us as individuals and small businesses.''

It is not about a union or a particular union. I have had a good relationship with individual teamsters over the years. When I practiced law I represented the longshoremen, the boilermakers, and every other union you can name.

No. What is this really about? This is about fairness for the American people. That is why this amendment has been offered and why it is so important. The taxpayers of America are paying for union elections. Do we want that? I don't think my constituents know that, and they would be horrified to know it. That is what this is all about. Paying for the Teamsters to hold an election has not happened once. It has happened twice. The question now is, Will it happen a third time because of fraudulent elections, or is it in fact a bill the American people have to foot in perpetuity?

I've heard a great deal of talk about a consent degree. I am not impressed that a judge said that the people of this country, the taxpayers, should pay for union elections. I am not impressed, whether it was a Republican or a Democrat administration, or which Justice Department went along with it. This is wrong.

When the people find out the truth of what is going on here, they will be in an uproar because we should not be paying for private union elections.

So that is the remarkable thing about this situation. That is why this amendment has been offered—to set up a process to stop taxpayers' money being used to conduct union elections; and more importantly, it sets up the process for taxpayers' money to be repaid.

That is one of the key components of the amendment of the Senator from Oklahoma. It says that there will be a process whereby the Teamsters, if, in fact, taxpayer dollars are involved, will have to pay back in an agreed-to process with a plan to repay the cost of these elections. The taxpayers of America paid $22 million for the last Teamsters' election; that is $45 per Teamster vote.

As the Washington Times noted, ''the taxpayers were monumentally ripped off.'' It turns out there was a fraudulent election. And now there is an indication, well, a judicial official might decree that the taxpayers should have to pay the Teamsters again. This is a horrible procedure. This is a horrible precedent. I don't care what union it is; what business it is. We shouldn't be paying for these kind of elections, and certainly not without some process to get the taxpayers repaid for what they have put into this process.

The Nickles amendment puts an end to this nonsense. It allows the Federal Government to continue the fight against corruption in the Teamsters Union but says the teamsters have to pay the American people back for the privilege of an honest election. For heaven's sake. Nothing could be more fair than that.

Last month, a Federal election official determined that ''corruption''—this is a quote—''in the Teamsters remains a major problem.'' Citing ''extraordinary'' and ''egregious improprieties,'' the Federal election officials threw out the Teamsters election. We didn't have anything to do with that. That is what the Clinton administration is saying about this. Taxpayers paid for what turned out to be a stolen private election.

Somehow or other the Justice Department, which was supposed to be overseeing this process, let someone in the Teamsters steal an election right from under its nose with the taxpayers paying the tab for the election. Guess what? Now they are saying, ''Well, we don't know but maybe we will have to have another election, and maybe the taxpayers should pay again.'' Ridiculous. It is time that we stopped this.

The Clinton FBI, not the Republican Congress, alleges that there was an intricate money laundering scheme pouring thousands of dollars from the union treasury into union president Ron Carey's campaign.

Ladies and gentlemen, my colleagues: This is a travesty. It is a travesty that these elections are fraudulent again and again. People around here forget that the Teamsters have even been thrown out of the AFL–CIO in the past for such corruption. Now you add to that equation more taxpayer funding. This won't sell in America.

The Nickles amendment should be adopted.

I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the issue now pending exists on complexity on a number of levels.

I agree with the remarks just made by our distinguished majority leader that the American people ought not to pay for union elections. It is an open question as to how the consent decree was entered into when it was, and why the U.S. Government entered into that consent decree. But that is what we face at the present time.

My view is that we have a question of judicial authority here which is paramount, and it is a matter for the court to decide under our doctrine of separation of powers.

We are very premature in what we are doing here on two scores.

One is there has been a recommendation for a new election, which, as I understand the record, has not yet been approved in the court. This is a complicated matter. There are lots of complexities on it. But my understanding is that it has not been approved by the court. And then the court under any expected interpretation would come to the conclusion that this is a new election, and not to be paid by the Treasury of the United States under the preexisting arrangement. That election has already been paid for. But essentially this a matter for the court to decide. And there would be ample time for the Congress to turn down an appropriation in the future on the basis that is not an appropriate matter to be paid for by taxpayers' money. But on this state of the record, it is my view that it is a judicial matter, and not a matter of the Congress.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I am constrained to follow the statement that is made by Senator SPECTER, the chairman of the subcommittee. It is my understanding also that the election officer's recommendation has not been approved by the court. I share the consternation of many people here about the timing of that election officer's report of her findings concerning that Teamster election.

It is clear that under the existing situation there is no order of the court. Even the court hasn't even considered that recommendation, if we have one who has exercised severe bad judgment in terms of the timing of the announcement of her finding. And it is apparent that she could be overruled as to even her findings. But the main thing is that this is a bill that has nothing in it pertaining to this matter.

There now comes another one of our cause celebre riders that could well lose the product of this bill.

Mr. President, we have 14 appropriations bills to pass by this Senate before September 30, 13 bills coming out of conference, and one continuing resolution. That says that if we can't send them all to the President and get them signed before the 30th, there will have to be a continuing resolution in any event. In addition to that, we have this bill and two other bills to pass.

We are really going to be in appropriations every day during this period of September.

I have great respect for my friend from Oklahoma. But I have to say the time to deal with this issue is when and if the administration asks Congress for money to pay for this election. We don't even know that there is going to be a new election. If the court rules there is to be a new election,

there is no authority in the Department of Justice or the Department of Labor to use existing funds for that election. They will have to come up here with a supplemental request. That is the time we should deal with it.

I have to say that it is my feeling, very frankly, as chairman of the committee, that I would rather risk a supplemental—an issue where we disagree with the administration—than risk the whole year's bill. To my knowledge, this is the only issue that would lead this bill to be subject to a veto.

So I really have to say, as I did to my friend from Oklahoma, that I disagree with the Senator from Massachusetts, too; that I don't think his amendment is necessary, the amendment in the second degree. And I don't think it is timely to raise the Nickles amendment now.

What we need to do is get on with our work and get this bill passed. We still have the Interior bill, we have the District of Columbia bill, and then we have all 13 bills to pass as conference reports, and then we have to pass a continuing resolution. And it has a conference report, too.

So, if we want to be here all year working appropriations, then we can spend our time on these riders again. For me, there is no necessity for the second kick of a mule. I got kicked the last time we had this problem on that supplemental. I don't see any reason to go through it again.

I urge the Senate not to approve these riders that are controversial. Every one of them has something we would like to have settled. And, if they are noncontroversial and we can work them out, we should do it. But this is a controversial matter. It is, obviously. I am told that the Department of Labor believes it is cheaper to pay for the supervision of the election rather than to have to deal with many complaints on the next election, if one is ordered.

So this is a very complicated issue.

From my point of view, it is not involved in this bill before us. I respect my good friend from Oklahoma in terms of his views about that election officer, as I have said, and the timing of the release, but there is nothing before us yet. The court has not approved that report. We are dealing with speculation as to whether there will even be another election. So why tie up this bill and tie up the Senate on an issue that is premature, Mr. President, and I urge the Senate to join me in voting against both my friend from Massachusetts and my friend from Oklahoma.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I heard the comments of my colleague from Alaska, but basically what he is saying is we should not tell the Department of Labor how to spend money. In this appropriations bill we appropriate money for the Department of Labor. In this case they appropriated about $22 million—admittedly it came from the Department of Labor and the Department of Justice—to conduct this last election. And they did a pretty crummy job. We paid millions of dollars and we ended up with a corrupt election.

I do not want that to happen again. We talk about adherence to the consent decree that was agreed to in 1989. I think my original amendment is in adherence to the 1989 consent decree, because it said that the Teamsters will pay for the 1991 election. They paid for it. And guess what. There was no complaint that it was a corrupt election. They paid for it themselves. You know what. People are a lot more frugal with their own money. They are less likely to steal from their own members. They are less likely to be corrupt maybe with their own members' money than they would be with taxpayer money.

So we had a 1991 election. Mr. Carey won. Fine. And I don't know that anybody—there was an overseer in the 1991 election. They did not allege fraud in that. So the 1991 election was done by the Teamsters. They paid for it. They should have paid for it. They had a good election. No one said a thing. The 1996 election the taxpayers paid for.

I will admit I did not know we paid for it until I read about it. And when did we read about it? Well, the overseer of the election, she announced during, or after the UPS strike—and that is the only thing UPS has to do with this—she waited until after the UPS strike to announce that there was fraud and that her recommendation would be that we need a new election. Mr. Carey only won by a few thousand votes. She said that maybe there were hundreds of thousands of dollars that were funneled in his direction and so she thought a new election was warranted.

Fine. Let there be a new election. I am just saying in the new election taxpayers should not pay for it. We did not pay for the one in 1991. It was a clean election. We paid for the one in 1996 and there was corruption. A lot of money was moved around. Let's make sure, if we have an election in 1998, it is not a corrupt election.

That is the purpose. This bill funds the Department of Labor for 1998. Let's make sure that taxpayer money is not used for this purpose.

Somebody says, well, is this in compliance with the consent decree. I will tell you the consent decree is silent on a rerun election. It does not say it. I read the consent decree two or three times. It does not say anything about a rerun. So maybe a judge would determine, well, maybe taxpayers should pay for it. Maybe a judge would not. But wait a minute. Congress is supposed to appropriate money, and we have opinions. If somebody says, well, we are violating, we are stamping out the consent decree, hogwash. The consent decree does not say it.

I did not request this, but there is a Congressional Research Service study dated May 1995, what would happen if Congress—does Congress have the right to withhold the money? The answer is yes. I will read you the quote from CRS. I will ask unanimous consent to put the entire study into the RECORD. But it says:

> Legislation enacted by Congress limiting or restricting the funds for the 1996 election would be a Federal law, and the Government parties would be bound to take appropriate action in reliance on that law.
>
> What are the consequences to the Congress of not appropriating all the funds necessary to supervise the 1996 IBT elections?
>
> There would appear to be no consequences to the Congress. The consent decree does not appear to obligate the Government to supervise the 1996 elections, either directly or indirectly. Rather, the decree embodies the consent of the union defendants to governmental supervision.

We had governmental supervision in 1991. We will in 1998. What I am saying is let's just not pay for the election. This is not a destitute group of individuals. These are people who do quite well. Great.

I read something; they average $27 an hour, about $50,000 a year. Fine. Why is the Federal Government paying for the election? We did not pay for the other election. We did not pay for the 1991 election. Why would we pay for a rerun of the election?

All I am trying to do is protect taxpayers' money. And my colleague is suggesting, well, maybe somebody is upset about the UPS settlement. That has nothing to do with it. I am offended by that allegation. That is totally ridiculous. All I am trying to do is protect taxpayers.

They had their strike. They had their settlement. And some people are running around saying, ''great victory,'' and so on. So be it. I am just saying you are not entitled to another $22 million of taxpayers' money. If the Teamsters pay for it—if it cost the Teamsters maybe less than half an hour to pay for their own election, they should pay for it.

I even went so far in the amendment to try to be fair. Some people said make sure you put in language that no Federal funds be used to conduct the election. You could use it to oversee the election, to supervise the election. We do that in Third World countries. We do that in new democracies, so maybe we would spend a little money to oversee the election.

I think that is fine, to have observers to try to monitor the election, to see that we would eliminate some of the corruption, but we had corruption when we had Federal funding because people took some of the Federal money and abused it. I am trying to make sure that does not happen again.

Do we have the constitutional right to do it? Absolutely. CRS said we do. The consent decree is silent on a rerun. Certainly we can do that. And my colleague from Alaska says the judge may not even agree. We had the overseer, who made $300,000 or $400,000 monitoring this election, find out it is corrupt, withholds that information until after

the UPS strike and then says, oh, yeah, we are going to have a new election. I didn't want to tell anybody during the strike because it might have influenced the strike one way or another. Oh, yes, but we need a new election.

I am saying fine. If they need a new election, I agree. If that's her recommendation, fine. I am saying taxpayers shouldn't pay for it. Very plain and simple. We can monitor it. We can try to make sure it is not corrupt. But we should not pay for it. It's that simple. We didn't pay for the 1991 election. They had a good election. Certainly we can allow an election in 1998, if there is to be an election. If there isn't going to be an election, fine. My amendment wouldn't cost the taxpayers. I am trying to save the taxpayers money. So this amendment wouldn't cost anything.

The very thought of my colleague who said maybe the administration would veto it, wait a minute. You have an appropriations bill that is actually hundreds of billions of dollars. They are going to veto this bill because they want to protect the Teamsters from what? Paying for their own election. Give me a break. You have to be kidding. How special interest could this group be? I know I saw the Vice President with the Teamsters on Labor Day, with thumbs up, and so on. But surely they would not veto a bill that says this group, which is pretty well compensated at an average—I guess truckers are making something like, I don't know, $27 an hour, wages and benefits—surely they say taxpayers that make a lot less than that should not be paying for their election when the consent decree does not say that. The consent decree is silent, frankly, on election reruns. I can't imagine that the administration would recommend vetoing a bill over something that special interest.

So, Mr. President, I think we have had adequate debate. I would just urge my colleagues to vote to table the Kennedy amendment, and I move to table the Kennedy amendment.

Mr. KENNEDY. Mr. President, will the Senator withhold for 2 minutes?

The PRESIDING OFFICER (Mr. BENNETT). The motion to table is not debatable.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum. I suggest the absence a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. KENNEDY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued with the call of the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. I ask unanimous consent to be able to proceed for 4 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. Just two brief comments. One with regard to the Congressional Research Service. It is not true that section O of the consent decree permits the U.S. Government to avoid its legal obligations under the decree, including its legal obligation to pay for supervision of the upcoming election.

Section O is a general savings clause retaining the right of the Government to seek remedies against the defendants for misconduct. It was never intended, nor can it be reasonably read, to override the remainder of the consent decree.

Under the overbroad reading of section O, the consent decree is meaningless—the parties would have agreed to nothing, because section O would always undermine the original understanding. This is an absurd reading of the provision.

It violates the basic rule of legal construction that meaning must be given to the entire text of the decree.

It has also been argued that under the decree the United States did not need to insist on supervision of the election and therefore need not pay for the election. This is also absurd—the United States did elect to supervise the election, and therefore must pay for the election. To say otherwise is to make the Federal Government a deadbeat; a party to litigation weaseling out of its legal duties.

Mr. President, Senator STEVENS said it best when he talked about bringing into this appropriation matters which are not directly related to the appropriations. I have here the statement of administration policy, September 2. I will read these provisions.

> The administration understands that a number of controversial amendments may be offered, such as an amendment to prohibit the use of funds in the act for supervising the Teamster's election * * * The President's senior advisers would be forced to recommend that the President veto the bill.

There are other provisions but that I think supports what the Senator from Alaska has mentioned.

I had hoped that we could have tabled the whole proposal, and I would have supported it. But nonetheless we don't have that opportunity at this time, so I hope that the proposal of the Senator from Oklahoma to table the measure would not be agreed to. And if that were the case, I would not object to tabling the whole proposal and get on with the business of the appropriations.

I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The motion to table is not debatable.

Mr. NICKLES. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Oklahoma to table the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Arkansas [Mr. MURKOWSKI] is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio [Mr. GLENN] is necessarily absent.

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 217 Leg.]

YEAS—56

Abraham	Enzi	Lugar
Allard	Faircloth	Mack
Ashcroft	Frist	McCain
Bennett	Gorton	McConnell
Bond	Gramm	Nickles
Breaux	Grams	Roberts
Brownback	Grassley	Roth
Burns	Gregg	Santorum
Byrd	Hagel	Sessions
Campbell	Hatch	Shelby
Chafee	Helms	Smith (NH)
Coats	Hollings	Smith (OR)
Cochran	Hutchinson	Snowe
Collins	Hutchison	Stevens
Coverdell	Inhofe	Thomas
Craig	Jeffords	Thompson
D'Amato	Kempthorne	Thurmond
DeWine	Kyl	Warner
Domenici	Lott	

NAYS—42

Akaka	Feinstein	Lieberman
Baucus	Ford	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Harkin	Moynihan
Boxer	Inouye	Murray
Bryan	Johnson	Reed
Bumpers	Kennedy	Reid
Cleland	Kerrey	Robb
Conrad	Kerry	Rockefeller
Daschle	Kohl	Sarbanes
Dodd	Landrieu	Specter
Dorgan	Lautenberg	Torricelli
Durbin	Leahy	Wellstone
Feingold	Levin	Wyden

NOT VOTING—2

Glenn	Murkowski

The motion to lay on the table the amendment (No. 1082) was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote by which the motion was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1083 TO AMENDMENT NO. 1081

(Purpose: To limit the use of taxpayer funds for any future International Brotherhood of Teamsters leadership election)

Mr. CRAIG. Mr. President, I have a second-degree amendment which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from Idaho [Mr. CRAIG], for himself, Mr. NICKLES, and Mr. JEFFORDS, proposes an amendment numbered 1083 to amendment No. 1081.

Mr. CRAIG. Mr. President, this second-degree amendment——

The PRESIDING OFFICER. The clerk has not concluded reading.

Mr. CRAIG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

Mr. KENNEDY. Objection. Can we have the reading of the amendment? It has not been distributed to the Members. It seems to me we ought to have the amendment read.

The PRESIDING OFFICER. The clerk will continue to read.

Mr. KENNEDY. May we have order?

Mr. WELLSTONE. Mr. President, may we have order, please?

The PRESIDING OFFICER. The point is well taken, the Senate is not in order. The clerk will continue to read.

The legislative clerk read as follows:

Strike all after the word ''Section'' and insert the following:

(a) IN GENERAL.—Except as provided in subsection (b), none of the funds made available under this Act, or any other Act making appropriations for fiscal year 1998, may be used by the Department of Labor or the Department of Justice to conduct a rerun of a 1996 election for the office of President, General Secretary, Vice-President, or Trustee of the International Brotherhood of Teamsters.

(b) EXCEPTION.—

(1) IN GENERAL.—Upon the submission to Congress of a certification by the President of the United States that the International Brotherhood of Teamsters does not have funds sufficient to conduct a rerun of a 1996 election for the office of President, General Secretary, Vice-President, or Trustee of the International Brotherhood of Teamsters, the President of the United States may transfer funds from the Department of Justice and the Department of Labor for the conduct and oversight of such a rerun election.

(2) REQUIREMENT.—Prior to the transfer of funds under paragraph (1), the International Brotherhood of Teamsters shall agree to repay the Secretary of the Treasury for the costs incurred by the Department of Labor and the Department of Justice in connection with the conduct of an election described in paragraph (1). Such agreement shall provide that any such repayment plan be reasonable and practicable, as determined by the Attorney General and the Secretary of Treasury, and be structured in a manner that permits the International Brotherhood of Teamsters to continue to operate.

(3) REPAYMENT PLAN.—The International Brotherhood of Teamsters shall submit to the President of the United States, the Majority and Minority Leaders of the Senate, the Majority and Minority Leaders of the House of Representatives, and the Speaker of the House of Representatives, a plan for the repayment of amounts described in paragraph (2), at an interest rate equal to the Federal underpayment rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 as in effect for the calendar quarter in which the plan is submitted, prior to the expenditure of any funds under this section.

(c) This section shall take effect one day after enactment of this Act.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, the second-degree amendment clarifies a few points in the first-degree amendment. As you noticed, the clerk read section (c) which merely discusses time of enactment and time in which the proposed amendment would take effect. What we have here, of course, is the fundamental question that has been brought by the Senator from Oklahoma: Who should pay for the elections of a private union?

The question fundamentally put before this Senate is very simple for all of us. Should it be the taxpayers or should it in fact be the union? I think we are concluding here that it should be the union in this instance. The taxpayers have done what they should do in this instance and should do no more.

I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I rise in support of the amendment offered by my colleague from Idaho.

Mr. President, let me just clarify again, some of our colleagues were not aware of the taxpayers' support for the last election. I told a couple colleagues—they said, ''How much did we spend?'' We spent $22 million; some people said more. The union has 1.4 million members. A little less than 500,000 voted. And $22 million is a lot of money. And a lot of money was wasted or maybe abused. It was abused, frankly, because it was taxpayers' money. That did not happen when it was their own union money. I mention, every other union in the country uses their own money for their own elections, as they should.

So, again, I urge my colleagues to adopt this amendment. This is not an unfair amendment. This even says that we can still use taxpayers' money. If for some reason the Teamsters do not have the money, they can borrow money from the Federal Government. They just have to pay it back. It happens to be, in my opinion, consistent with the consent decree because the consent decree is silent. The word ''rerun election'' is not mentioned in the 1989 decree.

So what we are trying to say is, in future elections they should pay for it. We can still have Federal Government monitors. We can still have some oversight to try to make sure it is not abused, as that last election was. Taxpayers were abused as well as Teamsters last time.

So I urge my colleagues to support this amendment.

Mr. President, I ask for the yeas and nays on the amendment.

Mr. CRAIG. Would the Senator yield?

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Would the Senator from Oklahoma yield for a question?

Mr. NICKLES. Certainly.

Mr. CRAIG. Does your first-degree amendment prohibit the Government from overseeing the rerunning of an election?

Mr. NICKLES. The answer to the Senator's question is no. The Government can have some oversight and be involved in monitoring the election, trying to make sure there is not corruption in the election. We should not have to pay for it.

Mr. CRAIG. In other words, if Teamsters were concerned, and there was at issue here corruption in the last election, and therefore a reelection to get rid of that corruption, or at least to have an outcome that all would be satisfied with, we could still have the Department of Labor and/or Justice involved in overseeing the rerunning of this election, and your amendment does not prohibit that?

Mr. NICKLES. The Senator is exactly right.

Mr. CRAIG. I thank the Senator.

Mr. NICKLES. Mr. President, one final comment.

We talk about this money, and people say, ''Big deal.'' We are talking about $22 million. The Federal subsidy for Presidential campaigns is what? $71 million for a general election. That is the amount of money that Senator Dole received; that is the amount that Clinton-Gore received from the taxpayers. This is one-third as much. That amount of money was for the entire country. We are talking about 1.4 million people, and only 500,000 or less voted last time.

Should taxpayers be liable for $22 million, or more? I do not think so. So this amendment tries to protect taxpayers. That is all it does. It tries to be fair to Teamsters and does not get involved in who should win in any way, shape, or form. It does not have anything to do with the UPS strike whatsoever.

The only involvement of the UPS strike was the fact that they found out there was a corrupt election, and that information was withheld until after the strike was over. I am just saying, let us just make sure that taxpayers do not get stuck again. We got stuck in 1996. It was a corrupt election. Let us not let it happen again for future elections.

Mr. President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as two Senators have indicated, this is basically a restatement of the Nickles amendment. The Senator from Oklahoma indicated earlier in the course of the debate that he was not interested nor did he want to interfere with the consent decree that had been signed in 1989.

I offered an amendment to make sure that that would be the case, by neither requiring the payment of taxpayers' funds to be used in a subsequent election nor prohibiting funds to be used. The principal issue that is before the Senate is whether we are going to interfere with a judicial proceeding that is before the Southern District Court of New York in which briefs are required to be filed on September 17.

This agreement, this consent decree, is not the result of the Clinton administration or the Clinton Department of

Labor. This consent decree was initiated by Mayor Giuliani in 1988 and agreed to in the Federal District Court of New York in 1989 and approved by a Republican Attorney General. They understood the powers which were being included in that consent decree. They understood fully what was being agreed to. The record demonstrates that. We can have a chance to go through that in greater detail if there really is a question by the Members on that particular fact. They understood the range of authority and responsibility as a result of that particular agreement.

This was based upon some 30 years of various activities by the Teamsters and the resulting initiative by Mr. Giuliani, who was the U.S. attorney in New York trying to bring a resolution to a great deal of the challenges, the difficulties, and the corruption that had been a part of the Teamsters in the past.

So now we have had intervening activities under that consent decree. But that consent decree has not been concluded. As I mentioned, that consent decree is active, and it is very much alive.

I did not hear the voices of those who are so troubled this evening complaining about that consent decree in 1988 or 1989. I did not hear the voices that are speaking on the floor of the U.S. Senate tonight that are concerned about how the consent decree was going to be implemented, saying that we will agree to a certain part of the consent decree but we will not agree to other provisions of it. That was not the case.

The only initiative, and the new initiative, to somehow interfere with this consent decree comes 2 weeks after the UPS and Teamsters strike, which was a strike for some 15 days and which resulted in the protection of certain rights of American workers, the 185,000 workers that were working for UPS, and other rights in terms of part-time workers and other issues involving pensions.

There are those who say, ''Well, this is completely coincidental. This is really just here today. We just feel it now in our bones that the fact that it is just after the successful UPS strike has nothing to do with it. And the indignity which has been demonstrated on the floor of the U.S. Senate to suggest that there might be some kind of correlation between the fact that this amendment is being offered now today, tonight on this appropriations bill, is startling to me.'' It speaks for itself. The facts speak for themselves. The facts speak for themselves. I think the Members in this body understand what is going on here.

As has been pointed out by Members on the other side—Members on the other side—this is a judicial process, judicial proceeding, and it should not be altered or changed. That was a Republican Senator, Senator SPECTER, who pointed that out very effectively and very well. And we have the statements of others on the other side. The Senator from Alaska, Senator STEVENS, said we should be about the fact of having an appropriations and move the appropriations process forward and should not become involved in these extraneous issues.

There will be those comments later on, I am sure, probably not too long from now, about how some Members are delaying the completion of the appropriations bill, when we took an hour last night to consider the issues of fetal transplantation, which is an issue that has been debated and debated and debated and debated, in which this body had gone on record time and time again, and we debated that over the course of the morning, which was basically an extraneous issue, and now we have been debating over the course of the afternoon about this issue which is extraneous to the appropriations process and procedure.

The statement of the administration with regard to this legislation is very clear. I will read it again: Unfortunately, the administration understands that a number of controversial amendments may be offered, such as an amendment to halt the testing initiative, an amendment to prohibit the use of funds in the act for supervising the Teamsters' election.

That is what this amendment does. It effectively undermines the court's flexibility in terms of the supervision of the Teamsters election.

Mr. SARBANES. Would the Senator yield for a question?

Mr. KENNEDY. Yes.

Mr. SARBANES. Doesn't, in fact, this amendment undercut the consent decree? The consent decree leaves open, as I understand it, the possibility that the supervision of this election will be done by public funds. It does not say that it will be, but it leaves open that possibility. This amendment closes out that possibility. It closes out that possibility. That possibility was part of the consent decree. It was left to the judgment of the court whether, in fact, that remedy will be used. Is that not the case?

Mr. KENNEDY. The Senator is correct.

Mr. NICKLES. Will the Senator yield?

Mr. KENNEDY. With the understanding of the Justice Department that that may very likely or probably be utilized.

Mr. SARBANES. Wasn't this consent decree approved by the Justice Department?

Mr. KENNEDY. Approved by the Republican Justice Department under Secretary Thornburgh, who embraced and endorsed and supported it, this consent agreement, that was initiated by now Mayor Giuliani, who was the Republican U.S. attorney in New York City.

Mr. SARBANES. So this amendment——

Mr. KENNEDY. If I could further respond, the consent decree required, as of September 17, the submission of additional briefs—September 17—to be submitted in the district court of New York on this very issue with regard to the recent election. This is a consent decree that is ongoing and is continuing.

What we are being asked is effectively to have legislative interference into a judicial proceeding. That case was made very clearly, I thought, and convincingly by Senator SPECTER and others, that there is a clear constitutional issue about separation of powers. I think it is very clear from the administration's letter that this will open this measure to a veto. I certainly believe that it should, since it is a clear violation of the separation of powers.

We were not either requiring, under the amendment that we had, that there be an expenditure of public funds or not. We are not trying to give guidance to the court to make a judgment. That judgment ought to be made on the basis of the facts and the briefs that are submitted to it.

Mr. SARBANES. Will the Senator yield further for a question?

Mr. KENNEDY. Yes.

Mr. SARBANES. It is my understanding that the consent decree left open that question and placed the power to decide it in the court; is that correct?

Mr. KENNEDY. The Senator is correct.

Mr. SARBANES. This amendment would, in effect, negate that aspect of the consent decree, would it not?

Mr. KENNEDY. The Senator is correct.

Mr. NICKLES. Would the Senator yield?

Mr. SARBANES. For a question.

Mr. NICKLES. If you read page 16 of the consent decree, it does not mention ''rerun.'' We are not affecting or changing the consent decree in any way.

Mr. SARBANES. Yes, you are; because the consent decree opens the possibility that the court will require that the election be paid for with public funds. It does not say that it will, but it does not say that it will not. It leaves open that option to the court. You are denying that option by your amendment and, therefore, undoing the consent decree.

How do you expect people to enter into a consent decree?

Was it 30 years they spent trying to work out a consent decree, did the Senator say earlier?

Mr. KENNEDY. Thirty years that this was a matter.

Mr. SARBANES. A consent degree that was involved with the Bush administration, approved by Attorney General Thornburgh, actually carried out, I take it, by U.S. Attorney Giuliani at that point.

Mr. KENNEDY. That is correct.

Mr. SARBANES. Of the Southern District of New York.

Now we are coming with an amendment to undo this process.

Mr. NICKLES. Will the Senator yield?

Mr. KENNEDY. I yield for a question.

Mr. NICKLES. I am happy to tell my colleague that in reviewing the consent agreement we did not undo anything. The consent decree does not say anything about a rerun election. It says that the Teamsters will pay for the 1991 election and it says taxpayers will pay for the 1996 election. It does not say anything about who will pay for a subsequent election. We are trying to clarify that.

We had 56 votes who say the taxpayers should not, that the Teamsters should. I think that is consistent with the consent decree.

I might mention, the CRS just studied this, and whose legal analysis I will refer to again, says the Congress has the right to do this, period.

Mr. SARBANES. I ask the Senator from Massachusetts, my understanding was that the 1996 election was never certified.

Mr. KENNEDY. The Senator is absolutely correct, so it is still an open question. That is a basic and fundamental point. That 1996 election has never been certified.

Mr. SARBANES. So the rerun they are talking about would in effect flow out of the 1996 election, does it not?

Mr. KENNEDY. The Senator is correct. It is not necessarily a requirement for a rerun. We do not know what the judge is going to require. The judge may require a rerun. The judge may not require a rerun. All we are saying is that we are not going to interfere in the prerogatives of the consent agreement which has been agreed to by the various parties who had a clear understanding about what the powers were for the various parties.

Mr. MCCAIN. Will the Senator yield?

Mr. KENNEDY. I yield.

Mr. MCCAIN. I am reminded of the words of the wonderful Mo Udall who said, ''Everything on this subject that could possibly be said has been said, only not everybody has said it,'' and I wonder if we had any time that we might want to conclude this debate since I do have a couple of pending amendments that I would like to address tonight.

Could the Senator from Massachusetts give me an idea as to perhaps when we might be able to move on?

Mr. KENNEDY. As long as this matter is before the Senate I think we are going to have an opportunity to talk about it. There are more Members here now than there were earlier. I would not object to setting this aside to consider other measures. That is not my idea of delaying. If it were to be set aside, I would not object to that process.

However, if we are going to be on this amendment, there are both speakers and additional points that I think ought to be made.

Mr. MCCAIN. I thank the Senator.

Mr. KENNEDY. So, as the Senator from Maryland has pointed out, the court may order the election to be run or it may not. It may require the Government to fund part of the election officer's supervision in some ways. It may be limited, maybe to that election, or it may require the union to do so, or it may require each party to bear some of the costs. All of that is out and all of that is possible.

The point is we do not know how the court will rule. We don't know how the court will rule, but this amendment now would tell the court that regardless of its ruling, regardless of its ruling, the Government will not be permitted to fund any of the election. Even if the consent order requires the Government to pay for part of it, the amendment would refuse to permit that. Thus, the amendment would interfere with an ongoing judicial process.

Effectively, the amendment, I believe would force the Government to be in a position of reneging on this consent decree. It would, I believe, leave the Government subject to a contempt citation. I think you can make a strong case at that time if we were to take this kind of action that the Government itself would be liable to a contempt citation.

Mr. SARBANES. Will the Senator yield?

Mr. KENNEDY. I yield.

Mr. SARBANES. In fact, as I understand it, part of the consent order was a consent by the union to have the 1996 election supervised by an election officer, is that not the case?

Mr. KENNEDY. That is correct.

Mr. SARBANES. Of course, part of that was that would be done at Government expense, to supervise the 1996 election? In other words, what the Government was getting out of this at the time was continued supervision of Teamster elections, and part of the consent decree was that the supervision of the 1996 election, extending well beyond the 1991 election, would be done at Government expense, is that correct?

Mr. KENNEDY. The Senator is correct.

Mr. SARBANES. Now the consent decree remains silent on the question of a rerun of that election since it has not been certified. This amendment would, in effect, deprive the court of an option that is now available to it, an option that, in fact, was left open by the consent decree. This is simply undoing a consent decree. You will never get consent decrees.

The Bush Administration held out the accomplishment of this consent decree as a major achievement, is that not correct?

Mr. KENNEDY. The Senator is absolutely correct.

Mr. SARBANES. In 1989?

Mr. KENNEDY. Correct.

Mr. SARBANES. Did not the President and the Attorney General hold it out as a major accomplishment?

Mr. KENNEDY. The Senator is correct.

Mr. SARBANES. Now, our colleague from Oklahoma and others are trying to undo the consent decree at a time, as I understand, that the court, 2 weeks from yesterday, will be receiving briefs on this very issue of the election, is that correct?

Mr. KENNEDY. The Senator is correct.

Mr. SARBANES. If ever there was an instance of trampling in on the part of the Congress and in effect, undoing an arrangement that was very carefully and elaborately worked out and, in fact, done so by now Mayor Giuliani but then U.S. Attorney Giuliani in the Southern District of New York, approved by the Department of Justice, headed by Richard Thornburgh, and held out by President Bush as a major accomplishment.

I thank the Senator for yielding.

Mr. KENNEDY. I thank the Senator for his comments because they make the case extremely well and effectively.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BROWNBACK). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. Several comments were made that we are vitiating the consent decree. Totally false. I will tell my colleagues, you can read the consent decree, it does not say anything about a rerun election. The consent decree did say that the Teamsters would pay for the 1991 election and taxpayers would pay for the 1996 election.

The Teamsters came out very well. They got a nice gift, $22 million, maybe more, which is over about $45, maybe $50 per person as the cost to the taxpayers of this vote. That is pretty high. Some of us do not think we should do it again.

Maybe I was asleep at the switch in 1989. It happened. Nobody objected. And in 1991, since the Teamsters paid for it, it never came up. I was not aware of it until after the 1996 election and we found the abuse. It is an abuse on the Teamsters and on the taxpayers and should not be repeated. That is the reason we have the amendment before the Senate.

We do not vitiate the consent decree. We say in the future, judge, we know the consent decree is silent. It does not say who should pay for it.

Now, frankly, if you read the Constitution it says Congress shall have the power to appropriate money. It does not say ''an unelected judge.'' It does not say a judge, where a consent decree is silent, has the power to go in and mandate something, like mandating U.S. taxpayer funds. Some of us think elected officials should make that decision, not unelected judges.

We are stating that in the future if there is another election, let the Teamsters pay. This is not a group of individuals that cannot afford it.

Mr. SARBANES. Will the Senator yield?

Mr. NICKLES. I am happy to yield to the Senator.

Mr. SARBANES. Does the Senator feel the election should be supervised by an election officer?

Mr. NICKLES. I tell my colleague my thought is it should be handled the way it was in 1991. We had Federal supervision and observation of the election in 1991 but the cost of the election was borne by the Teamsters.

Mr. SARBANES. But the consent to have an election officer was provided for by the Teamsters in the consent decree. Do you not ordinarily have an election officer to supervise an election?

The Senator says——

Mr. NICKLES. I have the floor.

Let me correct you. What I said, the way I hope it would be done is the way it was done in 1991. You had Federal supervision, you had Federal observers, you had Federal monitors, but you did not have taxpayers paying $22 million for the election in 1991, and you had, in 1991, an election that had Federal observers stating that they thought this was a fair, clean election. That is what I want. I want the Teamsters to have a fair, clean election and I do not want the taxpayers to take another ride for $22 million.

If we followed the thought that you and Senator KENNEDY have, you could have another corrupt election, taxpayers would be out another $20 or $30 million, an observer could receive another $400,000 for saying, ''Oops, it was corrupt again,'' and we could do it again and again and again.

Taxpayers have been taken for a ride once, we should not be taken for a ride again.

Mr. SARBANES. Will the Senator yield for a question?

Mr. NICKLES. I am happy to yield to the Senator.

Mr. SARBANES. Well, in fact, what the taxpayers got out of the consent decree was the use of the election officer for the 1996 election.

The Senator seems to proceed on the premise that having an election officer to supervise the election is the normal course of events. That is not the case. One of the things that was negotiated in the consent decree was getting an election officer for the 1996 election.

Let me read from the consent decree.

Mr. NICKLES. Is that a question?

Mr. SARBANES. I will ask a question.

''The union defendants consent to the election officer at government expense to supervise the 1996 IBT elections.''

Now, that represented a major concession by the union in the consent decree to place themselves under an election officer. Part of the consent decree was, obviously if they were going to do that, that the costs of the election officer would be paid by the Government and you are undoing that aspect of the consent decree.

Mr. NICKLES. Mr. President, since I have the floor I will make a comment. I am not undermining that because the consent decree touched two elections, for my colleagues' information. It touched the 1991 election and touched the 1996 election, and it did both elections differently. I hope my colleague will realize that, and if he reads the consent decree he will see that is the fact.

It said in 1991 the Teamsters paid for the election with some Federal supervision. In 1996 it said we will have Federal supervision and taxpayers pay for it. It does not say anything about a rerun. I am just saying on the rerun we should not pay for the election. We can still have supervision but we should not pay for it. That simple.

Mr. HARKIN. Will the Senator yield?

Mr. NICKLES. I am happy to yield to the Senator.

Mr. HARKIN. As I understand it, this election has not been certified. That has been brought out in the debate, and therefore we are still operating under the election of this year. As I understand it further, the Senator can correct me if I am wrong, that this finding of this election overseer now goes to a judge, the judge will make a decision as to whether or not to have a rerun of the election and, further, cannot that judge then decide who should pay for it, also?

Mr. NICKLES. I am happy to respond. The consent decree does not say who would pay for the next election. Now, the judge may interpret that the judge has the authority. I do not think they do, but that remains to be seen. What our amendment would do would be to clarify, ''Judge, you can make your order, but Uncle Sam or the taxpayers are not going to pay for the next election.''

Mr. HARKIN. Will the Senator yield? I have a question whether or not this is premature. Why not wait until the courts take their action and see what has happened before the Senate then operates. Obviously, it will happen in the next few weeks, I assume, and then the Senate can work its will after the judge makes a decision.

Would that not be a reasonable course to take?

Mr. NICKLES. I do not think so for this reason: One, because I think the Congress of the United States was elected to appropriate the money, not an unelected judge in New York; and, two, this is timely because this is an appropriations bill for 1998. If the election is ordered, it will be for 1998. I think, instead of allowing the Departments of Labor and Justice and this administration, who has very close ties with this particular union and might like to give them a $22 million gift—I don't think we should do that. So in this bill we are appropriating for next year, I think we should make it very clear that the taxpayers got the shaft and so did the Teamsters out of this last $22 million, and it should not happen again.

We clearly have the constitutional prerogative and right, as stated by CRS and the Constitution, to control Federal funds. I think we should make it very clear that in any subsequent election the Teamsters should pay for their own election. Every other union in the country pays for their own elections. They should do so.

Incidentally, when you look at the 1991 election, which they paid for, it was a good election. Then look at the election where the taxpayers put in $22 million; it was a corrupt election. That should tell you something. Federal funds don't automatically mean you are going to have clean elections. We can still have oversight. We have oversight in Third World countries where our Government is involved in bringing people in, whether it's President Carter or others, to help oversee and make sure elections are clean and upright.

Don't get me wrong. The Mafia has been very involved in the Teamsters, and they have been for decades. I want them to be out. I want the union to be clean. I want people to be able to vote and elect their representatives. It is kind of embarrassing, despite all this money, when you have a union of 1.4 million people and only 400-some-odd-thousand voted in the last election. I don't think the U.S. taxpayers should have to take the hit for paying for it to the tune of $22 million.

Mr. KYL. Mr. President, will the Senator yield for a question?

Mr. NICKLES. I am happy to yield.

Mr. KYL. Let me ask this question of the Senator from Oklahoma. Since this is boiling down to a question of whether the taxpayers of the United States should pay for a union election or whether the union should pay for its own election, why was it that the consent decree that some of our colleagues seem to be focusing so much attention on was entered into in the first instance? Why was the U.S. Government involved in dealing with the Teamsters Union in the first instance? And why was it that a special officer to oversee the election had to be assigned for that, or the parties agreed to have that officer oversee the election to ensure that it would be a fair election? Why was the U.S. Government obligated to provide these funds for this labor union, for a private labor union election?

Mr. NICKLES. I will read a statement that came from the Department of Justice, on page 2: ''Because of the deep entrenchment of La Cosa Nostra in the Teamsters electoral process, the consent decree gave the Government and the IBT the option to have the IBT election supervised by a court-appointed officer.''

It is because of the mob influence that has been with this union for a long time. I want it to be out. Hopefully, it is out. Obviously, there was still some corruption in the last election, which had a lot of taxpayer funding. The fact that the taxpayers had funds in it didn't clean it up. That is my point.

Mr. KYL. If I could ask this question. So the reason that my constituents in

Arizona had to help pay for this union election is because of past fraud and alleged illegal conduct of the union. That is why they are having to pay for this union election, or why they paid for the last union election; is that correct?

Mr. NICKLES. That's correct. Obviously, the fact that they paid $22 million didn't guarantee a clean election.

Mr. KYL. Obviously. The last question I ask is, why, if it is the union's elected officials' fault that the taxpayers had to spend this money in the first instance because they had allowed the fraud and alleged corruption to come into the union and tossed out the ability of the union to conduct its own election on behalf of its members, why, once the taxpayers paid for an election, should they have to pay for it a second time? The taxpayers didn't do anything wrong; it was the union officials.

Mr. NICKLES. I agree. That is the purpose of the amendment. We have a majority—I think we have one, or I believe we will have a majority when we vote, and I hope that we vote on the amendment in the not-too-distant future.

Mr. SARBANES. Mr. President, I want to respond to the questions put by the Senator from Arizona. The Senator seems to proceed on the premise that you are entitled to have an election officer to supervise a union election, although he referred to them as ''private unions'' and said, ''Why are we paying for this with public funds?''

Now, the deal that was made in 1989 by the Bush administration and by Attorney General Thornburgh was that the 1991 election would be held with an election officer, paid for by the union. The Government obviously wanted to have an election officer in the picture in the next election, the 1996 election. But part of the consent decree was, if the election officer was going to be in the picture for the 1996 union election, the cost of that election was going to be paid for by the Government. Now, you all talk about how anxious you are to keep the influence of the mob out of the union. I certainly subscribe to that. But what you are doing by this amendment is you are setting up the possibility that the union can conduct its election without an election officer because it is out from under the consent decree. The consent decree required the 1996 election to be done with an election officer. That election has not been certified. It is that election about which there are questions, which the judge is now going to hear. Now, you are going to come in and, in effect, undo part of the consent decree. I simply point out to you that it carries with it the very high risk that an election officer will no longer be required. That is how the Bush administration got an election officer for the 1996 election, through the consent decree. They got it for 1991, and they got it for 1996.

The Bush administration obviously wanted an election officer in the 1996 election. They didn't want the Teamsters out from under the consent decree altogether after the 1991 election. Part of the arrangement, in order to get the consent decree, was that the election officer would be, at Government expense, appointed to supervise the 1996 election. Now, that is the election that is in question. That is the election that has not been certified. I mean, you act as though the involvement of public moneys did not achieve a public objective.

What was the Bush administration thinking about, and what was Attorney General Thornburgh thinking about, to support a consent decree that provided that the Government would pay for the 1996 supervised election? Obviously, what they were thinking about is they would get an election officer to supervise the 1996 election, so they would carry the supervision of the Teamsters beyond the 1991 election.

Now you are coming in and you want to undo this arrangement. My view is, you are intervening in an established court procedure under the consent decree. Second—and I suggest that people stop and think about this very carefully—you are running the very high risk that you will enable the Teamsters to come out from under the consent decree, as far as having an election officer is concerned. The people on the other side will certainly say that other unions pay for their elections; the Government doesn't pay for their union elections. That is true. But they don't have an election officer to supervise it either.

In fact, the other side referred to this as private elections on the part of the union. Those private elections on the part of other unions are not supervised by election officers. With respect to the Teamsters elections, given the corruption we were trying to deal with, we thought it imperative to have an election officer. They got an election officer in 1991 for that election. The union paid for that election as part of the consent decree. But the Bush administration obviously wanted to supervise the next election as well, in order to ensure that they didn't revert back to past practices.

Part of getting an election officer for the 1996 election was that the Government assumed the cost of that supervision. Now, that election has not been certified. It still remains an open question, and that is the very matter on which the judge will be holding these hearings in less than 2 weeks' time. Now we come in here and are sort of, in effect, trespassing on this whole arrangement, portraying it as though there was no return to the Government for the arrangement. The Government got the use of election officers in order to supervise these elections. I mean, the Senator ought to want election officers to continue——

Mr. NICKLES. If the Senator will yield——

Mr. SARBANES. And not provide a way for the union to come out from under the consent decree and the election officer.

Mr. NICKLES. We had an overseer in the 1991 election, but it didn't cost $22 million. We ought to be able to have one in the 1998 election and not have it cost taxpayers $22 million. The overseer costs almost $400,000 for that one position. That is a lot of money. I don't have too many constituents that make that kind of money—$175 an hour. We had a lot of supervision and still had a corrupt election. We can still have supervision, but we should not pay for it. We had a clean election in 1991. We should not have to do this again in 1998.

Mr. SARBANES. I say to my colleague that that is not the consent decree which the Bush administration approved and which they presented forward as a major accomplishment. That is an interesting argument, but the Senator should have used it in 1989, at the time the Bush administration sanctioned this consent decree. Otherwise, you never would have had an election officer for the 1996 election. It is treated as though that is a normal course of events. That is a major part of the bargain that was reached in the consent decree, keeping an election officer. The other part of the bargain was that the Government would pay the cost for the supervised election.

Mr. BINGAMAN. Will the Senator yield?

Mr. SARBANES. I yield for a question.

Mr. BINGAMAN. It strikes me that the job of Congress is to appropriate funds for the Federal courts to administer justice as best they see fit. I am wondering why we are trying to wade in and specify how this particular Federal judge administered the implementation of the consent decree which has been entered in his court. It strikes me that we have Federal courts all over the country and we have consent decrees in place in hundreds, perhaps thousands, of cases all over the country. Here we are, singling out one of those cases and saying we are going to step in and specify how a Federal judge in the future should implement the administration of that consent decree. It just seems to me that we are micromanaging, in the worst possible way, and really stepping into an area that the Congress should stay out of.

We should get on with the business that we were given to do under the Constitution, which is to pass appropriations bills, and we should let the courts administer the cases that are before them. I ask the Senator from Maryland if he would agree with that basic view.

Mr. SARBANES. I think the Senator makes a very valid point, but I will take it a step further. By meddling into this, we may well make it possible for the Teamsters to come out from under the consent decree with respect to the use of an election officer to conduct the election.

I ask my colleagues on the other side, is that a result they want? Do they want the Teamsters to be able to

conduct an election without the use of an election officer?

Mr. NICKLES. I just say I would like to have it where we would have supervision, like in 1991. I don't think we have to give a $22 million gift to the Teamsters to have an election. It is a big union and a nice group of people. They ought to be able to elect their leaders, and we should not have to give them a $22 million gift in the process. We can do it like we did it in 1991.

Mr. SARBANES. I observe to the Senator that the only reason you got that supervision was because of the consent decree. The reason you had an election officer in 1991, and the reason you had one in 1996 was because of the consent decree. You don't automatically get election officers to supervise union elections. You are absolutely right, ordinarily union elections are paid for by the union. It is a private association. They pay for the elections. There is no election officer to supervise those elections.

Now, what the consent decree gave you was an election officer because the Government wanted to supervise the election as a way of rooting out corruption and the influence of the mob in the Teamsters Union. They got a consent decree and it gave them an election officer in 1991, and also gave them an election officer in 1996 because, obviously, the Bush administration didn't want to have just one election and then they are off the hook. They wanted to keep the supervision for the 1996 election. But in order to get that agreement and that understanding in the consent decree, they agreed to pay the costs of the supervision for the 1996 election, which is, in a sense, the election that is still before us, since it has never been certified.

Now you are coming in, and you want to in effect eliminate an option that is available to the judge in terms of carrying out the consent decree. My point is that is carrying with it the very high risk that you eliminate the election officer. Then that raises a question. Why do you want to eliminate the election officer to supervise the teamsters election? That brings us back to why we have the election officers to begin with. So that works the whole thing back full circle. This is a classic example of tramping in without fully thinking through what the consequences of doing so are.

As the Senator from New Mexico has pointed out, it intrudes into the judicial operation, clearly. But, beyond that, I think it carries with it a very high risk that you are going to be hoisted by your own petard here, and you are going to end up without an election officer, which is an essential part of the consent agreement that was reached which the Bush administration at the time trumpeted as a major accomplishment.

Mr. FORD. Mr. President, will the Senator yield for a question without losing his right to the floor?

Mr. SARBANES. I yield to the Senator.

Mr. FORD. Can the Senator help me a little bit in the position that I find myself? We are sitting here with the Federal judges—almost 100 vacancies around the country. And they have to pass a litmus test before we can ever get them to the floor so we might approve them so that justice might be done and not delayed. Now we find this amendment before us saying that we want to interfere in the courts that are already there.

My fear is that democracy, as we know it, is being deleted, in my opinion, because of the meddling with the Federal courts and the delay of the appointment of judges and the interference of statutory provisions that would tell the judge what to do and what not to do. That is not what this country was founded on. It was founded on justice by judges, and you have the ability to go to court. Now we are saying you can't.

Am I right or wrong? Have I lost something here, or have I found something on which my fear might be substantiated?

Mr. SARBANES. I think the Senator is on a very important point. As the Senator from New Mexico said, you have the Congress coming in and trying to in effect dictate what the conclusions are going to be in the court proceedings—improper intrusion into the process, and a total lack of respect for the separation of powers. We are talking about a consent decree here. We are not even talking about a matter which is just in the initial stages of litigation in which we have traditionally shied away from intervening in saying it is a matter to be resolved by the courts. We have a matter here that was in extended litigation and which resulted in a consent decree entered into under an order of the court.

Now we are coming along and we are going to play around with this consent decree, and it is treated as though there is no downside to it. In other words, they say, ''Well, we will not honor the consent decree that requires that we pay for the election but we will keep the election officer which was provided in the consent decree.'' Which is unprecedented. That is not the normal way you do an election with an election officer.

So they are going to keep the election officer. But they are going to deny the court the ability to handle the apportioning of the cost of that, which is apparent currently available to the court under the consent decree. You are playing with fire. The end result of this may be that the teamsters get out from under the consent decree, and they don't have to use an election officer in order to conduct their election.

If that is what you really want to do, I mean I think one ought to be explicit about it. I don't think that is desirable. The questions that have been raised about this election that just happened—and, you know, obviously, you want to be sure you have a fair election given the long history of this issue involving the Teamsters Union.

Mr. FORD. Will the Senator yield for an additional question?

Mr. SARBANES. Certainly.

Mr. FORD. Am I right if what I see here is that we are trying to say that this is a bad union here that is going to get taxpayer dollars to have an election? So, therefore, we are going to interfere. The issue is emotional. No question about it. But we are going to interfere with the courts, and we will diminish the courts. Isn't it time for thoughtful people to try to protect the judiciary here so that even though the question may be sensitive it may be a tough vote—we have had tough votes before. A lot of times they are not easy votes. But this is one I think we have to look beyond to the long-term harm that might be done to the judiciary.

Am I all wrong in this?

Mr. SARBANES. No. I think the Senator is absolutely correct. Just as the court is about to pass on this previous election and make some judgment as to what ought to be done with respect maybe to holding another election, we come along with this amendment, and in effect alter the consent decree.

What the Government got out of the consent decree was continued supervision of the Teamster election by an election officer. In order to get that for the 1996 election in the consent decree, the Government undertook to pay the costs of that election. Now people want to preclude that side of the bargain but they want to keep the election officer.

I am simply suggesting to them that they may lose the election officer as well and bring the Teamsters out from under the consent decree. I would think upon reflection that that is something they would not want to do. In fact, the consent decree very clearly states that the union defendants consent to the election of officers at Government expense to supervise the 1996 IBT elections.

This was a litigated matter. It was in the courts. In fact, the mayor of New York, the current mayor of New York, was then the U.S. Attorney, Rudy Giuliani, and this was the agreement they worked out as part of the consent decree, as part of this litigation. Now, it is suggested that, well, we didn't get anything for it. Of course, we got something for it. We got the continued supervision of these elections with an election officer. You don't ordinarily get that with union elections. Ordinarily the unions pay for the election. There is no election officer. The Government wanted an election officer. They wanted to supervise these elections. The union said pay for the '91 election. But they, obviously, want out from under it. In effect, the deal was if you are going to continue to supervise us with an election officer through the 1996 election, you are going to pay the costs of the 1996 election. This election we are talking about here is in effect a continuation of the 1996 election, and that one has not been certified.

So now we are playing, as it were, fast and loose with this consent decree.

The end result of it may be that you will get an unsupervised election throwing the whole thing right back. This thing was negotiated, as I understand it, after a long period of time with very intense and extended negotiations. And it was finally put in a place under the order of a U.S. district judge, and it was consented to by the U.S. Attorney. It was consented to by the U.S. Government, and consented to by the plaintiffs and by the defendant. In fact, there is a long list of signatures consenting to the consent decree. Otherwise, you would have been in litigation. You don't know what the outcome would have been.

At the time, I can recall President Bush declaring this a great success. I think it was an accomplishment by the Bush administration, by Attorney General Thornburgh. Now we come along, and we are undoing it here on the floor of the U.S. Senate.

Mr. WELLSTONE. Will the Senator yield for one comment in the form of a question?

Just to quote from Attorney General Thornburgh, who said on March 14, 1989, to back up the Senator's point, ''This settlement, which union leaders agreed to earlier today, culminates 30 years' of efforts by the Department of Justice to remove the influence of organized crime within the Teamsters Union''—to go back.

Mr. SARBANES. This was Attorney General Thornburgh commenting?

Mr. WELLSTONE. That is correct.

Just one question, because the Senator has been on the floor and I have been listening very carefully. It initially started out as a debate. I expressed my concern that I thought whatever the intentions were—I said good intentions—on the part of the colleagues, but that I thought that you really couldn't talk about this except in the context of what has happened with the Teamsters, and I thought this was profoundly mistaken. But now, what the Senator has been doing as a lawyer is—I am a lay person. I have been listening very carefully. As I understand the Senator, what he is really saying is that the most serious part of this above and beyond my concerns is that it really does—as the Senator from Oklahoma said earlier, he didn't see this as being anything in contradiction with the consent decree—the Senator from Maryland is arguing that it is most certainly in contradiction, in which case it becomes a very dangerous intrusion into the judiciary.

Is that correct? Is that the legal principle here, and the government principle?

Mr. SARBANES. I say to the Senator, yes. That is correct. What my colleagues on the other side are failing to understand is the history out of which this consent decree arose. In other words, the Federal Government filed suit against the Teamsters alleging mob influence in the Teamsters, and it went through an involved presentation of what the issues were, the campaigns of fear and extortion, and so forth and so on. That suit is pending. The Government then reaches a consent decree with the Teamsters. The matter never went to full-scale litigation. You don't know what the outcome of the litigation would have been. They reached a consent decree, and the Attorney General stated at the time, ''This settlement, which union leaders agreed to earlier today, culminates 30 years' of efforts by the Department of Justice to remove the influence of organized crime within the Teamsters Union.'' And the observer goes on to note that the Teamsters signed a consent decree with the Federal Government to avoid a trial over a lawsuit. The union agreed to purge its mob connections and hold democratic elections. Then they discussed the supervision that was taking place with respect to the 1991 election. And the grumbling, in fact, on the part of some of the rank and file of the Teamsters is that the union no longer belonged to them, ''their second-guessing of internal decisions that we make,'' et cetera, et cetera. ''They are eliminating democracy to ensure democracy,'' one of these dissidents said.

We got that arrangement in order to supervise this election in order to try to root out this mob influence. Part of the consent decree was not only that you have a supervisor for the 1991 election but you have one for the 1996 election, which was a marked departure from how these things are handled.

My colleagues on the other side say, well, we don't pay for the elections of any other unions. That is quite true. No. We don't pay for them. We don't have election officers to supervise them either. We don't have them under a consent decree. There is a national purpose or objective to be achieved by rooting out the corruption that existed in the Teamsters Union. This consent decree negotiated by Mr. Giuliani, or by his associates, when he was a U.S. attorney in New York, approved by the Department of Justice, by Richard Thornburgh, the Attorney General, was an effort to accomplish that objective. In order to do that, we were able in effect to impose an election regime upon the Teamsters, not only for the 1991 election, the immediately next forthcoming election, but also for the 1996 election.

Mr. SESSIONS. Will the Senator yield?

Mr. SARBANES. Let me finish my point, and I will yield. Obviously, as part of the effort to extend out supervision beyond another 5 years out into the 1996 election, the Government undertook to pay the costs of the supervision of the 1996 election. But we got an election officer to supervise it. That is the election that is now in question. That is the election that is going to be under the scrutiny of the Federal District judge in New York. Now we are sort of messing with that situation without even beginning to have any full appreciation of what the consequences may be.

I yield for a question by my colleague from Alabama.

Mr. SESSIONS. I thank my colleague. In looking at the consent decree. We talked a lot about it. I think we should look at it and see what it actually says with regard to the effort in the 1991 election. What I read it to say—perhaps there is more than I read. But this is what I have. It says that the union defendants further consent to the United States Department of Justice supervising any IBT elections—any. They consent to them supervising any elections or special elections to be conducted after 1991 for the officers of the IBT, president, general secretary treasury, vice president, and trustees.

Mr. SARBANES. What point is the Senator making?

Mr. SESSIONS. I think it says that it gives the United States clearly the option to do so, and pay for that election or not. In fact, I have in my hand a memorandum of the U.S. Department of Justice which says just that—interprets it just that way. It says on page 2, ''Because of the deep entrenchment of the La Cosa Nostra in the IBT's electoral process, the consent decree gave the Government the option to have the 1996 elections supervised by a court appointed officer.''

Mr. SARBANES. That is right.

Mr. SESSIONS. I don't think we would be in violation of the decree to have the Government—and we speak for the Government, don't we?—say to them we don't intend to fund the second one.

Mr. SARBANES. Do you think you could have an election officer to that election?

Mr. SESSIONS. I think you have an option to.

Mr. SARBANES. How would you have an election officer?

Mr. SESSIONS. The U.S. Government, because of its concern about the mob influence of a union, protected itself with the right to assert, the right to provide an election officer in supervision, to supervise the election. So we don't have to exercise that option.

Mr. SARBANES. I say to my colleague, a distinguished former U.S. attorney in Alabama, the consent decree specifically says the union defendants consent to the election officer at Government expense to supervise the 1996 IBT elections.

Now, if you do not regard this election that is coming up as a continuation of the 1996 election, how are you going to get an election officer for it given the specific provisions that are in this consent decree?

Mr. SESSIONS. What page is the Senator on?

Mr. SARBANES. Sixteen.

Mr. SESSIONS. Are you reading the first full paragraph there? It doesn't say 1996 election. It says they consent to supervision of any election. That means obviously the United States did not intend to supervise all those elections. The United States only undertook to do so if it chose to do so.

Mr. SARBANES. If I could interrupt my colleague——

Mr. SESSIONS. That is what the Department of Justice, the Clinton Department of Justice, memorandum says, that it has the option. I think that's the most plain reading of it, and I suggest to you the union agreed to this reluctantly, preferring not to perhaps but because they had to. I just don't think that would be a fair interpretation of it. I think the most normal interpretation would be that they have the option to do so, and I think this body has the right to say we choose not to fund it. Let's not do it.

Mr. SARBANES. I say to my colleague, the consent decree I am looking at, in the first sentence of the first full paragraph on page 16 says, ''The union defendants consent to the election officer, at Government expense, to supervise the 1996 IBT elections.''

Mr. SESSIONS. Yes. But I think the option is the same.

Mr. SARBANES. That's the point.

Mr. SESSIONS. Let's look at what the Department of Justice memorandum says. The point of the Department of Justice memorandum about the 1996 election was that it concluded the Departments of Justice and Labor believed they should be involved in supervising the 1996 election.

Mr. SARBANES. That's right.

Mr. SESSIONS. And they chose to exercise that option. I think this body has the right to say we don't think we should exercise the next option; at least we are not going to fund it.

Mr. SARBANES. The Department wanted to supervise the 1996 election. They got the consent, they got it as part of the consent decree from the union to do so, but the costs of the election would be borne by the Government.

We ought to let the court decide what the consent decree means because, if you start playing around with a consent decree with respect to the cost of the election, the next thing you may discover is that you have let the Teamsters out from under the consent decree and you will not have an election officer, which was part and parcel of the arrangement that was made in the consent decree.

That is the point I am trying to make. You are running a very large risk here that you are going to lose your election officer to moderate and supervise these Teamster elections. And we have a strong public interest in preserving an election officer. Let the court decide what the consent decree means, and the court can then do it in a way that assures you that the Teamsters will not come out from under application of the election officer. That is the point.

Mr. SESSIONS. If the Senator will yield, I must say I am most impressed with the eloquence that the Senator has brought to this argument and has done remarkably well, I think, with not a lot to work with.

The Congressional Research Service has also indicated that:

> Legislation enacted by Congress limiting or restricting the funds for the 1996 election would be a Federal law, and the Government parties would be bound to take appropriate action in reliance on that law.
>
> What are the consequences to the Congress of not appropriating all the funds necessary to supervise the 1996 IBT elections?
>
> There would appear to be no consequences to the Congress. The consent decree does not appear to obligate the Government to supervise the 1996 elections, either directly or indirectly. Rather, the decree embodies the consent of the union defendants to governmental supervision.

Basically, the union consented that they would allow themselves, their private entity, to be supervised as a consequence perhaps of, as part of, a settlement to avoid even more severe punishment that could have been enacted against them as a result of Mr. Giuliani's actions against that union. That would be to me the most logical interpretation of the agreement.

Mr. SARBANES. That's right. The union agreed to this as part of the consent. But the consent decree says the union defendants consent to the election officer, at Government expense, to supervise the 1996 IBT elections.

You are coming along and saying we want to keep the election officer—let me put this question to the Senator. Does the Senator want the Teamsters to be able now to go ahead and have a private union election without supervision, without an election officer?

Mr. SESSIONS. This Member says that I would oppose strongly any more funding of a $22 million election, and I am prepared to vote against it in that regard.

Mr. SARBANES. Even if the consequence of that is that you have an unsupervised Teamster election because they are out from under the consent decree? Is that correct?

Mr. SESSIONS. They may be. That is right.

Mr. SARBANES. I do not agree with the Senator. I mean, I put this question earlier, and it is interesting now to have this discussion take this turn because now we are beginning to see apparently on the part of some Members, they are really prepared to countenance the notion of having an unsupervised Teamster election.

Mr. SESSIONS. If the Senator will yield——

Mr. SARBANES. In effect, we are repudiating the option of continued Government payment of the election as a way of in effect losing your supervision over the Teamsters election. I do not see how the Senator can take that position when questions have been raised about the validity of the 1996 election. This is the very thing that the court is going to be deciding up in New York, and we ought to let the court decide what the consent decree means.

I think this exchange just now is a pretty dramatic illustration of why we ought to let the court decide what it means because otherwise we are running the very high risk of exactly what the Senator said he would countenance happening; namely, an unsupervised election. I am sure there are many Members who do not want an unsupervised election.

Mr. SESSIONS. If the Senator will yield, I do not think the legislation requires that. In 1991, we did not fund the elections but had supervision. I think we can have supervision through the Department of Labor or Justice. But we do not have to fund a $22 million election.

Mr. SARBANES. It is not quite the same. I say to the Senator that is not the agreement that is embodied in the consent decree. This consent decree was not done by this administration. This consent decree was done by the Bush administration. Attorney General Thornburgh said about it, ''This settlement, which union leaders agreed to earlier today, culminates 30 years of effort by the Department of Justice to remove the influence of organized crime within the Teamsters Union.''

The Senator had service as a U.S. attorney, and you know when you agree to enter into a consent decree, you know, in effect, there is some give and take on both sides, and this was the arrangement that was made. It was done by Giuliani, approved by Thornburgh, trumpeted by President Bush as a success. I thought it was a success. I continue to think it is a success. And I certainly don't think we should run the risk here of undoing the consent decree by refusing to carry out the Government cost of the elections and lose the election officer as a consequence and allow the Teamsters to have an unsupervised election, and that is the fire you are playing with here.

What we really should do here is we should back off and let the court handle this matter. The court has a consent decree to administer. It has options. Under that consent decree, the court could, in effect, maintain supervision and not pick up the costs of it. But that is a matter for the court to do as it interprets the consent decree. If we try to do it on the floor as we are trying to do right now, we run the risk of upsetting this whole apple cart and the whole effort to purge the Teamsters and to get an honest union.

Mr. SESSIONS. I thank the Senator for yielding, and I just would disagree; I don't think the Government is required to conduct or fund this election, and I do not think we should.

Mr. HARKIN. Will the Senator yield for a question not even related to this at all? I would like to know if the Senator has any information or knowledge about how long we are going to be here this evening? I say that as the minority manager of this bill.

If we are not going to vote this evening—maybe someone on the other side could tell me. If we are not going to vote this evening, I think we ought to let Senators know so Senators can go home. It is now 8 o'clock at night. We have had a fairly spirited discussion and debate. I don't mean to limit debate or anything, but I think we ought

to have some information so that Senators can either stay around for a vote or at least go home to be with their families.

Does the Senator know anything about that?

Mr. SARBANES. No. This isn't my amendment. I am just responding to the offering of this amendment, which I think is a very bad idea and which I am trying to develop. Actually there is a benefit to be gathered by some discussion of this matter, which was illustrated by the exchange we just had, because it was clear that at least there are some Members who, in order to avoid the costs, are prepared to let the Teamsters have an unsupervised election and let them out from under the consent decree. I think that would be very bad.

Mr. HARKIN. I agree.

Mr. SARBANES. I think that would be a bad consequence.

Mr. HARKIN. I agree entirely with the Senator from Maryland.

Mr. SARBANES. And an undesired consequence.

Mr. HARKIN. I agree completely with the Senator.

Mr. SARBANES. I think we are running a risk with what we are doing on the floor of the Senate.

Mr. HARKIN. I am just thinking about what the procedure is going to be for the rest of the evening. There are only four or five Senators, six, in the Chamber. I hope we would have some information so the Senators could make plans.

Mr. SESSIONS. Will the Senator yield?

Mr. HARKIN. I do not have the floor. He has the floor.

Mr. SESSIONS. My understanding was that a vote was expected tonight but that a number of Senators had some things they wanted to say about this bill and were being provided the opportunity to do so. I am not aware that there is any agreement not to vote. I thought the agreement in fact was to vote.

Mr. SARBANES. Mr. President, I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I say in response to my colleague from Iowa, I think there are Senators who want to speak on it. I don't know whether or not there will be time tonight in order to accommodate different people who want to comment on this amendment.

But as I understand it, and I will just try to summarize, there are two different sets of concerns I have. One set of concerns which I would repeat has to do not with the intentions of colleagues at all but has to do just with the sequence of events, the chronology. I just think that there is a great deal of discussion about what the UPS workers did. This was a Teamsters strike. There was a focus on the need to have more full-time jobs as opposed to part-time jobs. There was a focus on living-wage jobs.

The interesting thing is that I think the public really rallied behind the UPS workers. I think that the public felt that what the workers were talking about, what this union was talking about, was how you earn a decent living and how you are able to give your children the care you know they need and they deserve.

I think that this amendment, the Nickles-Craig amendment, is such an overreach because now what we have, just on the heels of this successful effort on the part of Teamsters to bargain collectively, is an effort—and now I have listened to this; I am not a labor lawyer—but an effort which essentially overturns a consent decree which was extremely important and essentially says we are going to go right to the heart of the judiciary and go back to an agreement which goes back, what, 30 years or thereabouts. I am sorry, this was initially agreed to in—I had it before me. Might I ask the Senator from Massachusetts a moment, the original agreement with the Bush administration was in 1989?

Mr. KENNEDY. In 1989, yes.

Mr. WELLSTONE. In 1989. I have quoted Attorney General Thornburgh on this. The idea was, look, this was, as my colleague from Maryland has said, an unprecedented situation. We were talking about corruption. We were talking about workers who want to have a fair election. And we finally had, after 30 years, an agreement here.

Now, this election has not yet been certified. The Kennedy amendment made no judgment about expenditure of money. But the idea of essentially trying to overturn this consent agreement, to interfere directly with the judicial branch, to really preempt what kind of ruling a judge might make before any kind of ruling has been made, and to do this on an appropriations bill, is profoundly mistaken. It is not prudent. So there are a number of Senators who have come to the floor and have raised a whole set of questions.

The Senator from Kentucky, Senator FORD, raised some questions having to do with the judicial appointments being blocked here—now, yet, a kind of threat to interfere with the judicial branch of Government—and whether or not this just was not the kind of political interference which is very inappropriate. He made the point that he felt that, as a Senator, if you were going to make a wise decision about this you would have to be in opposition to this amendment.

Senator KENNEDY started out tonight talking about both the context of this, the UPS workers and the successful effort on the part of the Teamsters, and now this—what is this all about? Just raising questions about the timing of it. But, then, more important, or just as important, Senator SARBANES has been on the floor and he has, I think, provided many of us his view—I certainly include myself, and this was essentially the position I think the Senator from Pennsylvania has taken—which is this is just an overreach. I mean, to just try to overturn or basically contradict or subvert this consent agreement, to interfere with the judicial branch, is a profound mistake.

So, my colleague from Alabama is correct. The point was that there would be a vote after Senators had a chance to fully discuss this. But, from my point of view, there are now three sets of questions that have been raised that I think are extremely important. Other Senators may want to discuss this as well. Or we might be able to reach some kind of agreement as to how we proceed. But, I think this is something that, if the Senate is a deliberative body, then we need to be very deliberative about this.

We had an agreement with a Republican administration, the Bush administration, which really dealt with 30 years' history. It was important. It was an effort to root out corruption. We had an agreement that was, I think, a very important step forward. Now what we have is an effort to essentially overturn that agreement. Now what we have is an effort to directly intervene or interfere with the judicial branch. Now we have an effort, which I think on political grounds, and probably on constitutional grounds, though I am not a lawyer, I am not even sure that, from a constitutional point of view—I believe the Senator from Pennsylvania may have raised this question—we should even be doing this, and for that reason there are a number of us who have been out on the floor and have been speaking about this.

If other Senators want to speak, I have had an opportunity several times tonight to raise these concerns. Senator SARBANES was on the floor a long time, I think really zeroing in on what the implications of this are, just in terms of branches of Government and separation of powers and what our constitutional system is about, which I think are pretty important questions. And one more time, as a Senator from Minnesota who had a chance to see what these workers were able to do and who strongly supported, I think, the justice, the justice goals of the strike—I have raised concerns about. I don't think it looks good. I don't think it's the right thing to do for the Senate to be involved in such an overreach, taking such drastic action, which I think, unfortunately, certainly looks like—I don't know what the motivations are of Senators—that it is very connected to this UPS workers' strike.

Mr. President, I will not speak any longer on the floor of the Senate. I will yield the floor.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Kentucky.

Mr. FORD. Mr. President, I questioned earlier the distinguished Senator from Maryland as to a real problem that I have as it relates to the

amendment that has now been submitted by the Senator from Oklahoma and the Senator from Idaho. My friend from Alabama, the junior Senator, has been a prosecutor. He has a great case. All of a sudden the Congress of the United States blows him out of the water because we don't believe what he is pursuing there is in the best interests of politics.

So, now we are confronted with a question that is in the courts and we are trying to make a judgment here to supersede what might be in the courts. Do we have a right to do that? I am sure we do. But in this Senator's feeling about this institution and this country, we have three separate branches. And those branches must set on their own bottom, as we would say down in west Kentucky. We should let them make their decision.

I think this is a very dangerous position. The emotion of the amendment is good. We have a big, bad union here that we don't want to spend any more taxpayers' dollars to see that they have a noncorrupt election. We want a noncorrupt election, but we don't want to spend any money. We made an agreement in 1989 under the Bush administration. There is no question about that. Let it be under President *x*'s administration. The question still flies: Do we then, by our actions here, micromanage the courts? We are about a hundred judges short in this country now. The majority will not let those judges come to the floor. Maybe 1 or 2 or 3, hopefully 4 we might get out, with 35 to 50 being held hostage.

So, what we have done, what we are doing tonight, even though the image here is one thing, the end result is another. If there ever was a question that you must put aside, however you feel, I think it is important that we support the system that has made this country great. And that is not micromanaging the Federal courts.

One of the things the distinguished Senator from West Virginia has always attempted to do is follow the procedure and the precedent on the separation of powers. He just has helped take a piece of legislation through the courts on line-item veto. And we are getting ready to do it again. So the courts will make a decision on what this body has been able to do. Now we are trying to take the position that we want to do this ourselves, in lieu of what the courts are about to do.

I know the big bad union, and spending taxpayers' money and all that, is a pretty good issue. But, to me, to this Senator, there is a much deeper question as it relates to the three branches of Government and the strength of this great land of ours in that we are attempting now to usurp those things that we will go out and beat our chests about back to our constituents how great we have been doing to try to protect them as consumers, those in our States or districts, as our constituents. Yet we are tonight, in my judgment, trying to usurp the power of the judiciary. In my opinion, if I sign a contract, it ought to be valid. Then to have a valid contract canceled by the legislative body just doesn't seem to me to be in the right direction.

I hope my colleagues will look beyond the emotion of the question and be sure that their judgment does not usurp the strength and foundation of this great country.

I yield the floor.

The PRESIDING OFFICER. The distinguished majority leader.

Mr. LOTT. Mr. President, I would like to respond to some of the things that have been said, or questions that have been raised when I was off the floor a few moments ago. First of all, I think I just need to reiterate here what is at stake is taxpayers' money being used to pay for labor union elections where there has been a record of fraud and abuse. Yes, there was a consent degree in 1989. How long does it apply? In perpetuity? We had a fraudulent election, on which, to my absolute horror, $22 million of taxpayers' dollars were spent. It turned out it had problems. The FBI has said so. The Justice Department has even said so. So now they say, oh, yes, let's have another one and let the taxpayers pay for that. So the American people understand very clearly here, this is taxpayers' money going to pay for labor union elections. Judges may or may not say that it ought to be done. All I have to say is, if judges are saying taxpayers' money should be used to pay for private sector, or labor union elections of any kind, I think it is time we take some action to say we are not going to allow that.

The second thing is, the question was raised, ''Why don't we have some votes? Why doesn't somebody tells us when we will have some votes?'' Hey, we are ready to vote. Let's vote on the Nickles amendment right now. The motion to table the amendment of the Senator from Massachusetts carried; 56 Senators voted to table that motion. I believe the Senate is ready to vote for the amendment of Senator NICKLES.

But, as we try to do around here, we try to accommodate everybody's schedules and their desire to be able to check with the administration or I don't know who. We could probably work out something, to have a vote on Senator NICKLES' amendment at some time certain other than tonight. He has indicated he would, perhaps, be willing to do that. But if anybody has raised any questions about why don't we vote, why isn't somebody saying what the schedule is going to be—if you want to vote, let's vote. If anybody wants to know that, any one of the Senators who have been speaking, I am ready to vote. That's what we ought to do. We already had a statement of the Senate on this issue. The Senate is concerned about use of taxpayers' money to pay for labor union elections.

But I have also been working on a whole series of things that I think would be fair to the Senate. Unfortunately, our business was interrupted today. From 2 to 4, we had to go out so the Environment and Public Works Committee could have a hearing and begin a markup on the Superfund bill, a bill that the American people surely would be for, because it means improving the way that we clean up hazardous waste.

We all know now lawyers are cleaning up. They are doing fine. But we are not cleaning up any hazardous waste sites. We ought to have Superfund reform. And yet there was an objection made to the committee meeting, so we had to go out for 2 hours. We would not be here right now probably if it had not been for that 2-hour interruption. But when we take out 2 hours in the day, we are going to make up that 2 hours at night, or 3 hours.

I have spent a year trying to be sensitive to Senators' needs, to know what the schedule is going to be, to be with their families, to be with their children, to be with their dog, dogs, so we can have a life, but it takes cooperation on both sides.

I hope we won't start down that trail where we start these things that force us to be in session late at night. But if it's necessary, we will. That is why we are here now. I had offered a UC request, and I am going to ask for this unanimous-consent agreement that would allow us to not have any more votes tonight, not have any votes tomorrow, but have further debate on amendments on the very important Labor and Health and Human Services bill during the day tomorrow, with no votes; that we would come in on Monday, we would have more amendments on the Labor and Human Services appropriations bill with a vote at 5 o'clock, but only one at the request of the Democratic leader; and that we would get at the close of business Monday a final, finite list of all amendments pending to this appropriations bill. Both the managers would very much like for us to help them get that done. Then we would have other votes that might be pending from Friday or Monday on this bill Tuesday at 9 or 9:30. Then we would be able to wrap up the finite list, which is not that long. There are a couple controversial issues. I think we can get them worked out. Then we would have final passage on all amendments and the bill on Tuesday.

Then at 5 o'clock on Tuesday, we would go to the Food and Drug Administration reform bill at 5 o'clock, not have any votes on cloture tomorrow, not go through the cloture exercise. An overwhelming number of Senators on both sides of the aisle support this FDA reform bill. It was reported out of committee, I think, 13 to 2.

Mr. COATS. Fourteen to four.

Mr. LOTT. When we get to final passage, the vote on FDA is going to be 95 to maybe 5, maybe more. Ninety-five Senators want to vote on the substance of FDA reform. The American people want that. The American people want

to get a better system for approving drugs and medical devices and a more active and a more efficient FDA. We ought to give it to them. I believe the House is going to act on this. So it was a process to allow the Senators to continue on this bill, to get this bill completed, get FDA up in a reasonable way, and not have more votes tonight.

Senator KENNEDY has indicated he can't agree to that. The alternative then is this: We will have to pull down Labor-HHS tonight. We will then go to two votes on Federal judges tonight. We will vote in the morning at 9:45 on cloture. If we get cloture, then, of course, the Senator from Massachusetts and others perhaps can talk all day tomorrow if they want to. They can talk for 30 hours if they want to after cloture on the motion to proceed—on the motion to proceed now, I want you to know—to the FDA bill that over 90 Senators support.

Then on Monday, we will go back to Labor-HHS, and we will have a vote on two more judges Monday, perhaps even earlier in the day than we had indicated earlier, and then we will go to votes at 5 o'clock.

I mean, we are trying to get these things cleared. We are going to have recorded votes on them. I think plan A is in the best interest of the Senate and the American people, our time and efficient legislating. We can get our work done without unnecessary acrimony, without getting outdone by each other.

If the alternative is two votes tonight and a cloture vote in the morning at 9:45, inconveniencing unnecessarily—and, again, I am trying to accommodate people, we need to go a little later because some can't quite be here at 9:45, others at 10. We will have the vote at 9:45, and we are going to vote cloture. I just don't see why that is necessary. That is where we are.

I am going to make a unanimous-consent request on that in a moment and then go to judicial nominations. Does anybody have any comment or questions on that? I yield to Senator KENNEDY for a question.

Mr. KENNEDY. I know the Senator is going to make a proposal in just a moment. I do want to just point out for the Members the obvious, and that is that we have spent all day today debating two basic issues: One is the issue of fetal transplantation which, basically, has no position on this legislation, an issue that we have debated and debated and debated and which the Senate has voted on time and again and the outcome of which was fairly obvious. We took all morning to debate that.

All afternoon we have been debating the Nickles amendment which, as the Senator from Alaska has pointed out, is not really basic and essential to this appropriations bill, which the administration indicates it would very likely veto. So it has not been the Members on this side who have delayed the Senate from moving ahead. As one, among others, who is concerned about the Nickles amendment, I indicated that if the leader wanted to set that aside and continue to vote on other measures this evening, there would be no objection on our side.

So I think that it is important to understand what the situation is. We are basically considering an item which is an antilabor item. It is raised in the wake of the successful UPS strike and, basically, is legislative interference on a consent decree which raises very important constitutional issues. So there should not be any surprise about that factor.

With regard to FDA reform, the Senator made a very good point about the Members being ready and willing to vote on the medical devices and the FDA reform. What the Senator didn't mention is the other provisions which apply to the cosmetic industry which effectively is going to preempt every State in this country from getting adequate warning in terms of health and safety in the utilization of cosmetics. We know it is a $20 billion industry that for the last 20 years has been trying to get this achieved and have a preemption on issues relating to health and safety that primarily affect the American women in this country.

I am not going to be a part of rushing and ramrodding that particular provision through the U.S. Senate. And if I am the only one who votes against cloture tomorrow, I will take my time and explain in good time what we are being asked to consider. I have no regrets for insisting that we have a cloture vote. I indicated to the majority leader, if he wanted to have the cloture vote later at a more convenient time on Tuesday, Wednesday, or Thursday of next week, that is fine with me, absolutely, whatever he wanted to do to accommodate other Members.

Mr. LOTT. If I can claim my time.

Mr. KENNEDY. I ask recognition——

Mr. LOTT. On that particular point, I have been reasonable. I have put off scheduling.

Mr. KENNEDY. If I can finish my point and then I will be glad to yield, Mr. President.

Mr. LOTT. All right.

Mr. KENNEDY. But I have made that, so if Members didn't want to vote tomorrow, we could vote on this on Tuesday or Wednesday, give the majority leader an hour's notification to Members whenever that would come up any time Tuesday or Wednesday, but that has been rejected. We are going to be here for another 5, 6 weeks in this body. We have been attempting to negotiate these particular issues. I am very hopeful we will.

I want to vote for the medical devices and the pharmaceuticals. I commend Senator JEFFORDS and all of our colleagues on the committee for the excellent work that they have done. I think that measure is a very, very important measure. There are one or two items which I think would be addressed in terms of amendments, but on the issue of the cosmetics preemption of every State in the country in terms of health and safety, that is an issue that is not going to go easily.

Mr. COATS. Will the majority leader yield?

Mr. LOTT. I will yield, since his name, I believe, was invoked earlier, for a response to that.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. I felt compelled to give the other side of the story. Yesterday, when I offered the fetal tissue amendment to the Parkinson's legislation, I had discussed the matter with Senator WELLSTONE. I had indicated I was willing to take a 20-minute time agreement on the amendment, 10 minutes on each side. I didn't want to do anything that unnecessarily delayed the bill. I was informed that it was not—it was acceptable to Senator WELLSTONE but it was not acceptable to Democratic Members who wanted to speak on the bill but didn't want to do it yesterday. That is within their rights. We could have proceeded. We didn't.

This Senator agreed to allow to be pulled over until this morning. I once again offered a time limit, and the time limit was not acceptable. So we essentially sat here for 2½ hours this morning listening to Members of the party of the Senator from Massachusetts oppose the amendment, which they have a right to do. But there was no delay initiated on the part of the Senator who offered the amendment, nor was there any delay on the part of the majority leader.

In regards to the FDA legislation, we were ready to go with that legislation before the recess, and it was the Senator from Massachusetts who prevented us from doing that. The Senator has every right to do that. If he has an objection to a part of the bill, he has a right to utilize the rules of the Senate to stop the bill from moving forward. But the facts are that the Senator doesn't have the votes. I didn't have the votes on some of my amendments. I didn't have the votes on fetal tissue, but I didn't stand here and insist the Senate stay in on a day when Members from both sides made plans and made travel plans just because I didn't have the votes or I couldn't get my way.

The Senator does not have the votes for the bill. He did not have them in the committee, and he does not have them on the floor. There is widespread support for the FDA reform bill, including the cosmetics provision which was voted on in committee. We had debate, and we voted on it in committee. The Senator didn't have the votes from the opposition party, didn't have the votes from his own party. He doesn't have the votes on this floor.

If he wants us to go through this exercise on a motion to proceed—this is just the procedure to start debate on the bill—why doesn't the Senator do what the rest of the Senators are doing, and that is, move forward on the bill, make your argument, have a vote, count the votes? If you win, you win; if you lose, you lose. But you can use the

rules of the Senate. It is a right to the minority. We have used it. If the Senator wants to do that, he has the opportunity to do that, but it inconveniences everybody else, and if you think it is going to change the result, maybe it is worth it, but if it is just to be obstinate or intransigent because you didn't win or your point of view isn't accepted by your fellow colleagues, it puts everybody else at a disadvantage. To imply the majority leader——

Mr. WELLSTONE. Will the Senator yield?

Mr. COATS. Or the Republicans have somehow conspired to deny the Senator from Massachusetts the right to make his point or to argue his point, my goodness, we have been hearing that over and over and over and over. We know what the Senator's position is. He has the right to argue it, and he has the right to delay it. Let's make sure it is not implied somehow there is some devious effort on the part of the Republicans to deny the Senator his opportunities.

Mr. WELLSTONE. Will the Senator yield?

Mr. LOTT addressed the Chair.

Mr. WELLSTONE. If the Senator will yield.

Mr. LOTT. If you will allow me to respond to some of the things the Senator from Massachusetts said. He asked for 1 minute to wrap up, and I need to respond, and then I will be glad to yield.

With regard to the amendment before us, it was offered at 5:05. An offer was made to limit the time on that to 30 minutes. I believe the managers of the bill were very content with that. An offer was made to limit speeches to 5 minutes on this issue. There was no desire to drag it out. So, again, to imply that we have been prolonging this is just not accurate.

Now, with regard to the Food and Drug Administration effort to make the bureaucratic FDA more responsive to the needs of the American people, this really affects quality of life and health care, and I know the Senator from Massachusetts cares a great deal about that. This is one way we can help them to get medical devices and pharmaceutical products available to the American people. The vote in the committee was 14 to 4. Usually when you have a vote in the committee and it is overwhelming in a bipartisan way, you bring it to the floor and you have debate, amendments, vote, and move on.

But somehow or other, I mean, some folks seem to think when you have a vote in a committee and lose, then the negotiations begin. The leader of both parties always has to be sensitive to that. I have allowed Senators on both sides of the aisle to continue negotiations on the foster care bill, on other bills, but I have been very patient on this. And I wanted a cloture vote on this back in July. I was told repeatedly, ''Oh, we're about to get it agreed to, about to get it done.'' Every time we were about to get it done, the Senator from Massachusetts said, ''Oh, no, there's something else here I want.''

I think the Senator from Vermont has been doing the very best he can in the negotiations. I personally think he has negotiated too dang much. The vote in the committee was 14–4. Why are we negotiating on all this stuff? Let us bring it to the floor and let us vote.

So when I get this magnanimous offer: Oh, you can have a cloture vote next week, put it off another—I offered a UC that would have given the Senator from Massachusetts an opportunity to negotiate Friday, Monday, all day Tuesday, and go on the bill on Tuesday night. He said no. But if we wait until next Tuesday to have a cloture vote on the motion to proceed, then he may try to force us to have a vote on going to the bill itself later on on a cloture vote, and then we might someday, in another week or so, get to FDA. That is ridiculous. There has been enough time.

The Senate wants to vote on this issue, overwhelmingly, in a bipartisan way. The committee has spoken. On a cloture vote, on a motion to proceed, the requisite number of Senators will vote for cloture, I believe. So I mean, that is not very responsive. It is time we get to this issue. Make your case, offer your amendments.

On the cosmetic thing, I mean, the Senator from Massachusetts is defending and worrying about States rights. Boy, getting some role reversals around here, when he doesn't want us to even get an amendment and vote on it. He may have the merits on his side. If he does, let us hear them; we will vote.

But, you know, it is time that we move forward on Labor-HHS. It is time we vote on the merits of FDA reform. I cannot believe we want to further delay. Every day we delay on FDA reform, there is some other delay by the bureaucracy at that agency that denies the people of this country medical devices and pharmaceuticals that help them with their lives and lifestyles. And so we are not going to delay it any longer. We are going to get an agreement to go to the bill on Tuesday or we are going to have a cloture vote in the morning. And if the vote doesn't succeed, we will have another one. I think I have been more than reasonable, and so has everybody else.

UNANIMOUS-CONSENT REQUEST

Mr. LOTT. Mr. President, I ask unanimous consent that the following be the only amendments remaining in order to the Labor-HHS appropriations bill, other than the pending amendments, and they be subject to relevant second-degree amendments, and that all first-degree amendments must be offered prior to the close of business on Monday, September 8, other than the amendments designated as managers' amendments.

I further ask unanimous consent that following the disposition of the amendments, the bill be advanced to third reading, and a vote occur on passage of S. 1061, and the bill remain at the desk. I further ask unanimous consent that once the Senate receives the House companion bill, the Senate proceed to its immediate consideration, and all after the enacting clause be stricken, the text of S. 1061 be inserted, the House bill be advanced to third reading, and passed, all without further action or debate.

I further ask unanimous consent that the Senate insist on its amendment, request a conference with the House on the disagreeing votes, and the Chair be authorized to appoint conferees.

I further state for the membership that any votes ordered with respect to the Labor-HHS bill on Friday and Monday, September 8, be postponed to occur at 5 p.m. on Monday, with one vote at that time, on a case-by-case basis. Thereafter, we will begin votes on Tuesday morning at 9:30.

I further ask unanimous consent the Senate proceed to S. 830 following the passage of the Labor-HHS appropriations bill—that is the Food and Drug Administration reform bill—but not earlier than 4 p.m. on Tuesday, September 9, to give the Senate plenty of time to continue to work on any agreements that they could come together on, and the cloture vote scheduled for Friday be vitiated.

That is the unanimous-consent request that I think is fair for all concerned. I urge that it be accepted.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Reserving the right to object, Mr. President, I want to just point out that the person that sets the schedule is the majority leader. If the majority leader files the cloture motion on a Wednesday, we end up having the cloture vote on a Friday. That is what the majority leader has done. It was his decision. He has every right to. And that is what we have as the regular order that is before the Senate.

But effectively what the majority leader now is doing is asking a consent to vitiate what the regular order would be in terms of the cloture motion. I do not question that we are short on the votes and that there will be an overwhelming vote in favor of moving toward the bill. But the regular order is, as filed by the majority leader on Wednesday, for a cloture vote on Friday. He knew what he was doing. He knew what he was doing.

He was the one that set the vote for Friday. And so I find it somewhat difficult to accept easily the fact that somehow the burden ought to be on other Members because the Senator now does not want to move ahead and have the vote on Friday. He was the one that established that process and procedure and set in motion those procedures. And for the reasons that I have outlined earlier with regard to

particularly the preemption with regard to the cosmetics, and the protection of the consumers on those issues, which I think is a travesty in protecting the American families, and primarily the American women, I am going to object to the elimination and vitiation of the cloture motion.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. In view of what I just heard the Senator say—he is right, that is the regular order. Of course, it is common practice, if you work things out you vitiate the necessity for a cloture vote. But, yes, I knew exactly what I was doing. And what I was doing was trying to carry out the will of the Senate, and not allow one Senator to any further delay the discussion of the merits of FDA reform.

In view of what the Senator said, I revise my unanimous-consent request to comply with what I thought I heard the Senator saying, the same unanimous-consent request all the way down the line, except that we would have the cloture vote in the morning at 9:45.

Would there be objection to that?

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. I personally do not believe I would object to it, I say to the Senator. I do not know whether the amendments that have been included—I have not seen the list. I have had some amendments.

Mr. LOTT. It has been cleared——

Mr. KENNEDY. I have been given assurance by the staff—Mr. President, I object temporarily until I have a chance to talk to the minority leader.

The PRESIDING OFFICER. Objection is heard.

Mr. KENNEDY. I object until I have a chance to talk to him.

Mr. LOTT. In an effort to try to get a reasonable agreement worked out here—I believe our list has been cleared on both sides. I think the Senator from Iowa has had a chance to review it. In the interest of trying to get something worked out here, I would be prepared to take a 5-minute quorum call so we can look over the list and discuss it. If we cannot get that worked out, then I would begin the process of taking up the two judges and voting here in a few minutes.

So in view of the Senator's comments, and the idea that maybe we could get an agreement, I would at this point——

Mr. LEAHY. Will the Senator yield for a question?

Mr. LOTT. Yes. By the way, this unanimous-consent request was worked out over a period of hours. I think it has been cleared on both sides by all Senators with the exception of one. Senator DASCHLE was intimately involved in it. And some of the things in the UC were at his request, including that we only have one vote at 5 o'clock on Monday. So, I mean, everybody cleared it except Senator KENNEDY.

Mr. FORD. Would the majority leader yield?

Mr. LOTT. I would be glad to.

Mr. FORD. Is there any doubt that we will have two votes as it relates to judges following whatever occurs on your unanimous consent request? I think that we need to alert your side and ours.

Mr. LOTT. That was not in the UC.

Mr. FORD. You mentioned you were going to have one.

Mr. LOTT. That is my intent. If we do not have any cooperation on other matters, we would vote.

Mr. LEAHY. If the leader would yield for a question.

Mr. LOTT. Yes.

Mr. LEAHY. Might, while you are trying to work this out, have one of those votes on the judges? We have to do them at some point anyway. Go ahead and do it.

Mr. LOTT. Mr. President, so that everybody will know we are on the verge of having a vote, I think it is in the interest of all of us to take 5 minutes, look at the list, and everybody could be called to notify them we are fixing to begin voting. And if the Senator was not here, we plan to vote on two judges tonight, and hope to get two more perhaps Monday or so.

Mr. FORD. There will be a rollcall vote on this?

Mr. LOTT. I have been requested to get rollcall votes.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. While both sides continue to check the amendment list and see if we can get an agreement on the UC, let's start our first recorded vote, that will be out of the way, and perhaps we can get a final agreement.

Mr. FORD. If the majority leader will yield, it is my hope that everyone has been notified that we are going to vote. I hope we would not start until such time as we feel like both sides have been notified.

This side is all right.

EXECUTIVE SESSION

UNANIMOUS-CONSENT AGREEMENT—NOMINATIONS OF HENRY HAROLD KENNEDY, JR., AND FRANK M. HULL

Mr. LOTT. As in executive session, I ask unanimous consent the Senate proceed to executive session to consider the following nominations on the Executive Calendar, and further the Senate proceed to an immediate vote on each nomination consecutively. I further ask unanimous consent that following the series of votes, and it is two votes on the nominations, the President be immediately notified of the Senate's action and the Senate then proceed to return to legislative session.

The executive nominations at this time are as follows: Calendar No. 164, Henry Harold Kennedy, Jr, of the District of Columbia, to be U.S. District Judge for the District of Columbia, and Calendar No. 233, Frank M. Hull, of Georgia, to be U.S. Circuit Judge for the Eleventh Circuit.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I further ask unanimous consent it now be in order to ask for the yeas and nays on each of these nominations with one show of hands.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I now ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there sufficient second? There is a sufficient second.

The yeas and nays were ordered.

NOMINATION OF HENRY HAROLD KENNEDY, JR., OF THE DISTRICT OF COLUMBIA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Henry Harold Kennedy, Jr., to be a U.S. District Judge for the District of Columbia? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska [Mr. MURKOWSKI], the Senator from North Carolina [Mr. HELMS], and the Senator from Rhode Island [Mr. CHAFEE] are necessarily absent.

Mr. FORD. I announce that the Senator from Ohio [Mr. GLENN] is necessarily absent.

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 218 Ex.]

YEAS—96

Abraham	Dorgan	Kyl
Akaka	Durbin	Landrieu
Allard	Enzi	Lautenberg
Ashcroft	Faircloth	Leahy
Baucus	Feingold	Levin
Bennett	Feinstein	Lieberman
Biden	Ford	Lott
Bingaman	Frist	Lugar
Bond	Gorton	Mack
Boxer	Graham	McCain
Breaux	Gramm	McConnell
Brownback	Grams	Mikulski
Bryan	Grassley	Moseley-Braun
Bumpers	Gregg	Moynihan
Burns	Hagel	Murray
Byrd	Harkin	Nickles
Campbell	Hatch	Reed
Cleland	Hollings	Reid
Coats	Hutchinson	Robb
Cochran	Hutchison	Roberts
Collins	Inhofe	Rockefeller
Conrad	Inouye	Roth
Coverdell	Jeffords	Santorum
Craig	Johnson	Sarbanes
D'Amato	Kempthorne	Sessions
Daschle	Kennedy	Shelby
DeWine	Kerrey	Smith (NH)
Dodd	Kerry	Smith (OR)
Domenici	Kohl	Snowe

Specter	Thompson	Warner
Stevens	Thurmond	Wellstone
Thomas	Torricelli	Wyden

NOT VOTING—4

Chafee	Helms
Glenn	Murkowski

The nomination was confirmed.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, for the information of all Senators, the next recorded vote will be the last vote tonight. Unfortunately, we have not been able to work out an agreement that will allow us to vitiate the cloture vote on the FDA reform bill tomorrow morning. So there will be a vote at 9:45. After that, Senator KENNEDY, assuming cloture is invoked, would have 4 hours of debate on FDA reform. We could go back to the Labor-HHS appropriations bill tomorrow for other amendments to be offered, but no further votes, other than the 9:45 vote.

On Monday, we will have FDA debate from 12 until 1. Then we will go to the Labor-HHS at Monday at 1. We will have a vote at 5 o'clock on Monday on either the Nickles amendment or any other amendment that Senators have taken up during the day, or any other pending amendment. I believe the McCain amendment is pending. We will have one vote at 5 o'clock on Monday. And then, on Tuesday, we will have other amendment votes, if there are any pending, at 9:30. We would complete the list we have agreed on, all amendments, and final passage on Labor-HHS sometime Tuesday afternoon, and then we will go to the FDA reform package, but not earlier than 4 o'clock.

I had hoped we could get an agreement that would allow us not to have had a cloture vote in the morning and be able to vitiate that. Senator KENNEDY didn't feel he could agree to that. I hoped that we would not have to have votes on Monday, but we could not get all that worked out. So that is the outline of the UC that I would like to renew. I have discussed this with Senator DASCHLE. The list has been worked over by everybody. So I would like to renew my request with respect to the Labor-HHS appropriations bill that I made earlier and ask consent, if cloture is invoked Friday on the FDA reform package, that there be up to 8 hours divided between Senators JEFFORDS and KENNEDY for debate on S. 830 and an additional 4 hours of debate on Monday, divided in the same fashion, beginning at 11 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I further ask that the Senate proceed to S. 830 following passage of the Labor-HHS appropriations bill, but not earlier than 4 p.m. on Tuesday, September 9.

Mr. WELLSTONE. Reserving the right to object, Mr. President. I want to ask a question. On Labor-HHS, amendments laid down by Monday, are you saying all amendments have to then be dispensed with and voted on by Tuesday?

Mr. LOTT. By Tuesday afternoon. We don't have an exact time set. But looking at the list of amendments, we believe we can do that by 4 or 5 o'clock Tuesday afternoon.

Mr. WELLSTONE. That is not part of the agreement. I am sorry.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Let me repeat, we have, we believe, a finite list. All amendments have to be offered by the close of business Monday. Look, there is not a lot of really tough stuff on the list. We believe we can finish all amendments, and all amendments would have to have been offered by the close of business Monday. We believe we can be through at a reasonable hour Tuesday afternoon. We are not locking in final passage.

Mr. WELLSTONE. I thank the Senator.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. For the information of all Senators, again, there will be one vote at 9:50 on Friday. Any other votes ordered Friday or Monday before 5 will be stacked to occur on Tuesday morning, except for the one vote on Monday afternoon.

I yield the floor, Mr. President, and I ask that we proceed with the regular order.

NOMINATION OF FRANK M. HULL, OF GEORGIA, TO BE U.S. CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

The PRESIDING OFFICER. The question is, will the Senate advise and consent to the nomination of Frank M. Hull, of Georgia, to be U.S. Circuit Judge for the Eleventh Circuit. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska [Mr. MURKOWSKI], the Senator from North Carolina [Mr. HELMS], and the Senator from Rhode Island [Mr. CHAFEE] are necessarily absent.

Mr. FORD. I announce that the Senator from Ohio [Mr. GLENN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 219 Ex.]

YEAS—96

Abraham	Brownback	Coverdell
Akaka	Bryan	Craig
Allard	Bumpers	D'Amato
Ashcroft	Burns	Daschle
Baucus	Byrd	DeWine
Bennett	Campbell	Dodd
Biden	Cleland	Domenici
Bingaman	Coats	Dorgan
Bond	Cochran	Durbin
Boxer	Collins	Enzi
Breaux	Conrad	Faircloth
Feingold	Kennedy	Reid
Feinstein	Kerrey	Robb
Ford	Kerry	Roberts
Frist	Kohl	Rockefeller
Gorton	Kyl	Roth
Graham	Landrieu	Santorum
Gramm	Lautenberg	Sarbanes
Grams	Leahy	Sessions
Grassley	Levin	Shelby
Gregg	Lieberman	Smith (NH)
Hagel	Lott	Smith (OR)
Harkin	Lugar	Snowe
Hatch	Mack	Specter
Hollings	McCain	Stevens
Hutchinson	McConnell	Thomas
Hutchison	Mikulski	Thompson
Inhofe	Moseley-Braun	Thurmond
Inouye	Moynihan	Torricelli
Jeffords	Murray	Warner
Johnson	Nickles	Wellstone
Kempthorne	Reed	Wyden

NOT VOTING—4

Chafee	Helms
Glenn	Murkowski

The nomination was confirmed.

STATEMENT ON THE NOMINATIONS OF FRANK M. HULL AND HENRY HAROLD KENNEDY

Mr. LEAHY. I am encouraged that the Senate is taking up two of the nine judicial nominations on the Executive Calendar.

I am delighted that the Senate majority leader has decided to take up the nomination of Judge Frank M. Hull to be a U.S. Circuit Judge for the Eleventh Circuit Court of Appeals. Since 1994, the nominee has been a United States district judge for the Northern District of Georgia and prior to that she was a judge for the Superior Court of Fulton, County in Georgia. The ABA has unanimously found her to be well-qualified, its top rating. With the strong support of Senator COVERDELL and Senator CLELAND, this nomination has moved expeditiously through the committee and is being confirmed by the Senate. I congratulate Judge Hull and her family and look forward to her service on the Court of Appeals.

I am also delighted that the Senate majority leader has decided to take up the nomination of Judge Henry Harold Kennedy, Jr. to be a U.S. district judge for the District of Columbia. Since 1979, the nominee has been an associate judge for the District of Columbia and prior to that he was a U.S. magistrate. The ABA has unanimously found him to be well-qualified, its top rating. With the strong support of Senator THURMOND and Delegate ELEANOR HOLMES NORTON, this nomination has moved expeditiously through the committee and is being confirmed by the Senate. I congratulate Judge Kennedy and his family and look forward to his service on the district court.

With these confirmations the Senate will raise to 11 the number of Federal judges confirmed this year and exceed, for the first time this year, the snail-like pace of confirming one judge per month. The Senate pace will rise to an anemic 1.2 judges per month. Meanwhile, vacancies have continued to mount and the delays in filling vacancies continue to grow.

It is discouraging to once again have to call attention to the fact that of the 61 nominations sent to the Senate by the President some 40 nominees are pending before the Judiciary Committee—nominees who have yet to be accorded even a hearing during this Congress. Many of these nominations have been pending since the very first day of this session, having been renominated by the President after having been held up during last year's partisan stall.

The committee has not yet worked through the backlog of nominees left pending from last year. Several of those pending before the committee had hearings or were reported favorably last Congress but have been passed over so far this year, while the vacancies for which they were nominated over 2 years ago persist. The committee has 12 nominees who have been pending without action for more than a year, including 7 who have been pending since 1995.

There is no excuse for the committee's delay in considering the nominations of such outstanding individuals as Professor William A. Fletcher, Judge James A. Beaty, Jr., Judge Richard A. Paez, Ms. M. Margaret McKeown, Ms. Ann L. Aiken, and Ms. Susan Oki Mollway, to name just a few of the outstanding nominees who have all been pending all year without so much as a hearing. Professor Fletcher and Ms. Mollway had both been reported last year. Judge Paez and Ms. Aiken had hearings last year but have been passed over so far this year.

We continue to fall farther and farther behind the pace established by the 104th Congress. By this time 2 years ago, Senator HATCH had held 8 confirmation hearings involving 36 judicial nominees, and the Senate had proceeded to confirm 35 Federal judges.

Those who delay or prevent the filling of these vacancies must understand that they are delaying or preventing the administration of justice. We can pass all the crime bills we want, but you cannot lock up criminals if you do not have judges. The mounting backlogs of civil and criminal cases in the emergency districts, in particular, are growing taller by the day.

I have spoken often about the crisis being created by the 103 vacancies that are being perpetuated on the Federal courts around the country. At the rate that we are currently going this year, more and more vacancies are continuing to mount over longer and longer times to the detriment of greater numbers of Americans and the national cause of prompt justice. We are not even keeping up with attrition.

Chief Justice Rehnquist has repeatedly acknowledged the crisis being posed for the Federal judiciary and, I believe, for all Americans. The Chief Justice has called the rising number of vacancies ''the most immediate problem we face in the federal judiciary.'' The Courts Subcommittee heard on Thursday afternoon from judges from the second and eighth circuits about the adverse impact of vacancies on the ability of the Federal courts to do justice. The effect is seen in extended delay in the hearing and determination of cases and the frustration that litigants are forced to endure. The crushing caseload will force Federal courts to rely more and more on senior judges, visiting judges and court staff.

The Attorney General spoke recently about the ''vacancy crisis that has left so many Americans waiting for justice'' noting that vacancies are up at a time that filings are up, caseloads are increasing, backlogs are increasing, and we are experiencing an ''unprecedented slowdown in the confirmation process'' that has ''very real and very detrimental impacts on all parts of our justice system. She spoke about the hundreds of appellate arguments being canceled, the Federal judges who go for entire years without hearing a single civil case. She said: ''Quite simply without enough judges, our laws will become empty promises and 'swift justice' will become an oxymoron, and without the independence they need to uphold those laws, our judges will become hostages to politics instead of being the guardians of our principles.''

In July I received a copy of a letter sent to President Clinton and the Republican leader of the Senate by seven presidents of national legal associations. These presidents note the ''looming crisis in the Nation brought on by the extraordinary number of vacant federal judicial positions'' and the ''injustice of this situation for all of society.'' They point to ''[d]angerously crowded dockets, suspended civil case dockets, burgeoning criminal caseloads, overburdened judges, and chronically undermanned courts'' as circumstances that ''undermine our democracy and respect for the supremacy of law.'' I agree with these distinguished leaders that we must without further delay ''devote the time and resources necessary to expedite the selection and confirmation process for federal judicial nominees.'' The President is doing his part, having sent us 61 nominations so far this year with more on the way. The Senate should start doing its part.

In choosing to proceed on these two nominees, the Republican leadership has chosen once again to skip over the nomination of Margaret Morrow and to delay action on six other outstanding nominees who were reported at the same time as those fortunate enough to be selected for consideration by the Senate this week.

I want to turn briefly to the long-pending nomination of Margaret Morrow to be a district court judge for the Central District of California. Ms. Morrow was first nominated on May 9, 1996—not this year but May 1966. She had a confirmation hearing and was unanimously reported to the Senate by the Judiciary Committee in June 1996. Her nomination was, thus, first pending before the Senate more than a year ago. This was one of a number of nominations caught in the election year shutdown.

She was renominated on the first day of this session. She had her second confirmation hearing in March. She was then held off the Judiciary agenda while she underwent rounds of written questions. When she was finally considered on June 12, she was again favorably reported with the support of Chairman HATCH. She has been left pending on the Senate Executive Calendar for more 3 months and has been passed over, again.

This is an outstanding nominee to the District Court. She is exceptionally well qualified to be a Federal judge. I have heard no one contend to the contrary. She has been put through the proverbial ringer—including at one point being asked her private views, how she voted, on 160 California initiatives over the last 10 years.

She has been forced to respond to questions about particular judicial decisions. I find this especially ironic in light of the Judiciary Committee's questionnaire in which we ask whether anyone involved in the process of selecting the nominee discussed with her ''any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question.'' We try to ensure that the administration imposes no litmus tests and does not ask about specific cases.

The committee insisted that she do a homework project on Robert Bork's writings and on the jurisprudence of original intent. Is that what is required to be confirmed to the district court in this Congress?

With respect to the issue of ''judicial activism,'' we have the nominee's views. She told the committee: ''The specific role of a trial judge is to apply the law as enacted by Congress and interpreted by the Supreme Court and Courts of Appeals. His or her role is not to 'make law.'" She also noted: ''Given the restrictions of the case and controversy requirement, and the limited nature of legal remedies available, the courts are ill equipped to resolve the broad problems facing our society, and should not undertake to do so. That is the job of the legislative and executive branches in our constitutional structure.''

Margaret Morrow was the first woman president of the California Bar Association and also a past president of the Los Angeles County Bar Association. She is an exceptionally well-qualified nominee who is currently a partner at Arnold & Porter and has practiced for 23 years. She is supported by Los Angeles' Republican Mayor Richard Riordan and by Robert Bonner, the former head of DEA under a Republican administration. Representative James Rogan attended her second confirmation hearing to endorse her.

Margaret Morrow has devoted her career to the law, to getting women involved in the practice of law and to

making lawyers more responsive and responsible. Her good works should not be punished but commended. Her public service ought not be grounds for delay. She does not deserve this treatment. This type of treatment will drive good people away from government service.

The president of the Woman Lawyers Association of Los Angeles, the president of the Women's Legal Defense Fund, the president of the Los Angeles County Bar Association, the president of the National Conference of Women's Bar Association and other distinguished attorneys from the Los Angeles area have all written the Senate in support of the nomination of Margaret Morrow. They write that: ''Margaret Morrow is widely respected by attorneys, judges and community leaders of both parties'' and she ''is exactly the kind of person who should be appointed to such a position and held up as an example to young women across the country.'' I could not agree more.

Mr. President, the Senate should move expeditiously to consider and confirm Margaret Morrow, along with Anthony Ishii, Katherine Hayden Sweeney, Robert F. Droney, Janet C. Hall, Joseph F. Bataillon, and Robert C. Chambers to be district court judges.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

FOOD AND DRUG ADMINISTRATION MODERNIZATION AND ACCOUNTABILITY ACT OF 1997

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of S. 830, the FDA reform bill.

The PRESIDING OFFICER. Is there objection?

Mr. ENZI. I object on behalf of Senator KENNEDY.

The PRESIDING OFFICER. Objection is heard.

MOTION TO PROCEED

CLOTURE MOTION

Mr. ENZI. I now move to proceed to S. 830, and send a cloture motion to the desk.

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar 105, S. 830, the FDA reform bill:

Trent Lott, James Jeffords, Pat Roberts, Kay Bailey Hutchison, Tim Hutchinson, Conrad Burns, Chuck Hagel, Jon Kyl, Rod Grams, Pete Domenici, Ted Stevens, Christopher Bond, Strom Thurmond, Judd Gregg, Don Nickles, and Paul Coverdell.

Mr. ENZI. I now withdraw the motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

MORNING BUSINESS

Mr. ENZI. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ANOTHER ACT OF TERRORISM SHOWS PEACE PROCESS SIMPLY IS NOT WORKING

Mr. HELMS. Mr. President, another tragedy struck the people of Israel today. Three Palestinian suicide bombers attacked a crowded pedestrian mall in the center of Jerusalem. At least three Israelis were killed; many more were wounded.

There was another bombing in the center of Jerusalem on July 30, in which 17 people were killed. Those murders were also claimed by the Palestinian terror group, Hamas.

As in July, all the requisite people will issue the required condemnations, and comfort themselves that they have responded adequately. But how can we pretend that enough is being done about Palestinian terrorism? How can we look at pictures of Yasser Arafat embracing a terrorist on the front page of the New York Times and still maintain the fiction that this is a man committed to fighting terror?

The answer, Mr. President, is simple: we cannot.

Last month, in the wake of the most recent Jerusalem bombing, Secretary of State Madeleine Albright said she would travel to the Middle East if the PLO took the necessary steps to crack down on terrorists. Those steps clearly have not been taken. More innocent civilians lie bleeding in the streets. But the administration still clings to the fiction of a peace process.

I have said many times, and I say again today: There is no peace in this process. How long will we be expected to play along with this charade, pretending that meetings, consultations, and formalities can substitute for genuine attempts to deliver peace and security to the people of Israel?

In the coming months, the Congress will reconsider the provision of assistance to the Palestinians. At that time, we must ask ourselves whether the PLO has complied with its commitments, not only to Israel, but to the United States. We must ask ourselves whether Palestinian territories have become a beachead for terrorists. We must ask ourselves if the PLO and Yasser Arafat are partners worthy of the confidence of the United States.

Mr. President, all we need do is look at the pictures on our television screens to see that the answer to each of those questions is no.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, September 3, 1997, the Federal debt stood at $5,413,621,503,580.39—five trillion, four hundred thirteen billion, six hundred twenty-one million, five hundred three thousand, five hundred eighty dollars and thirty-nine cents.

One year ago, September 3, 1996, the Federal debt stood at $5,226,657,000,000—five trillion, two hundred twenty-six billion, six hundred fifty-seven million.

Five years ago, September 3, 1992, the Federal debt stood at $4,035,387,000,000—four trillion, thirty-five billion, three hundred eighty-seven million.

Ten years ago, September 3, 1987, the Federal debt stood at $2,361,615,000,000—two trillion, three hundred sixty-one billion, six hundred fifteen million.

Fifteen years ago, September 3, 1982, the Federal debt stood at $1,110,240,000,000—one trillion, one hundred ten billion, two hundred forty million—which reflects a debt increase of more than $4 trillion, $4,303,381,503,580.39—four trillion, three hundred three billion, three hundred eighty-one million, five hundred three thousand, five hundred eighty dollars and thirty-nine cents) during the past 15 years.

U.S. FOREIGN OIL CONSUMPTION FOR WEEK ENDING AUGUST 29

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending August 29, the United States imported 8,513,000 barrels of oil each day, 1,786,000 barrels more than the 6,727,000 imported each day during the same week a year ago.

Americans relied on foreign oil for 57.4 percent of their needs last week, and there are no signs that the upward spiral will abate. Before the Persian Gulf war, the United States obtained approximately 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970's, foreign oil accounted for only 35 percent of America's oil supply.

Anybody else interested in restoring domestic production of oil? By U.S. producers using American workers?

Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the United States—now 8,513,000 barrels a day.

LOUISIANA CONTESTED ELECTION

Mr. WARNER. Mr. President, periodically, I report to the Senate on the work of the Rules Committee investigation into alleged fraud and irregularities that may have affected the outcome of the 1996 Louisiana Senate

election. Our committee is conducting this investigation under the authority given the Senate pursuant to article 1, section 5 of the Constitution of the United States.

Briefly recapping, I reported on May 8 of the committee's efforts to secure a bipartisan investigation. On May 23, I reported our efforts to obtain the detail of FBI agents to the committee and the agreement to issue over 130 subpoenas, although for election records only. Then, on June 26, I reported that the Rules Committee Democrats had, unexpectedly, withdrawn from the investigation—after only 2 weeks of committee action in the field. FBI support, likewise, was terminated by the Attorney General.

I also reported that the results of the investigation had revealed a significant failure, by election officials, in numerous Louisiana statutory provisions designed to safeguard the election from voter fraud. Given these numerous breaches of law, although many appeared to be unintentional, I believed the Senate had an obligation to examine a broad number of areas where the potential for fraudulent acts and voting could have occurred.

On July 31, the committee authorized me to continue the preliminary investigation and granted me, by resolution, the authority to issue subpoenas. To date, I have issued 38 subpoenas, in addition to the 134 Senator FORD and I jointly agreed to issue, which have resulted in thousands of pages of documents as well as the appearance of numerous witnesses at 4 days of hearings held in New Orleans. We have received testimony from officials in the LIFE [Louisiana Independent Federation of Electors, Inc.] organization, as well as the owners of Carl Mullican Communications, Inc. [CMC], organizations prominently mentioned in the Jenkins petition and supporting documents.

We have received testimony from representatives of gambling-related companies, witnesses who have voted more than once or had knowledge of those who had, van drivers on election day, and election officials, including one who worked on election day as both an election official and as a canvasser for a gambling company.

Our investigators have also interviewed hundreds of people, regarding allegations of: mismatched signatures, precincts closing beyond the prescribed closing hour, multiple voting, noncompliance with State voting laws, and involvement of gambling industry in the election.

On August 29, GAO detailed three persons to the committee to assist in the examination of election documents received as a result of subpoenas. We are now negotiating for an additional detail of qualified accountants to help examine the subpoenaed gambling industry documents.

We also have requested the Department of Justice to reconsider its withdrawal and to return this case with added support. To date, we have been met with their continued resistance.

As I concluded the second series of Louisiana hearings, on August 27, I stated that further hearings were needed. In consultation with the committee, I will soon set our next hearing.

The pullout of the Democrats. and resultant loss of FBI support have complicated our task, but we are continuing to make progress in this investigation. My goal remains to ensure that the committee's work is performed in keeping with the precedents of the Senate in past election cases and to give the full committee my honest judgment of the established facts. The committee will then report to the full Senate its honest judgment of these facts respecting the Senate's duty under the Constitution of the United States.

Suffice it to say, the results of this investigation to date are as yet incomplete. We do not have that body of facts to convincingly state that fraud or irregularities did, or did not, affect the results of the 1996 election for the U.S. Senator from Louisiana.

As developments occur, of such significance as to inform Senators, I again will give a timely report.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE ACTIVITIES OF THE U.S. GOVERNMENT IN THE UNITED NATIONS FOR CALENDAR YEAR 1996—MESSAGE FROM THE PRESIDENT—PM 62

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

I am pleased to transmit herewith a report of the activities of the United States Government in the United Nations and its affiliated agencies during calendar year 1996. The report is required by the United Nations Participation Act (Public Law 264, 79th Congress; 22 U.S.C. 287b).

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 4, 1997.*

REPORT OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR FISCAL YEAR 1996—MESSAGE FROM THE PRESIDENT—PM 63

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

In accordance with section 701 of the Civil Service Reform Act of 1978 (Public Law 95–454; 5 U.S.C. 7104(e)), I am pleased to transmit the Eighteenth Annual Report of the Federal Labor Relations Authority for Fiscal Year 1996.

The report includes information on the cases heard and decisions rendered by the Federal Labor Relations Authority, the General Counsel of the Authority, and the Federal Service Impasses Panel.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 4, 1997.*

MESSAGES FROM THE HOUSE

At 11:53 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that pursuant to section 2702 of title 44, United States Code, as amended by Public Law 101–509, the Clerk of the House appoints the following individual on the part of the House to the Advisory Committee on the Records of Congress: Mr. Roger Davidson of Washington, D.C.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 2016) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 1998, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. PACKARD, Mr. PORTER, Mr. HOBSON, Mr. WICKER, Mr. KINGSTON, Mr. PARKER, Mr. TIAHRT, Mr. WAMP, Mr. LIVINGSTON, Mr. HEFNER, Mr. OLVER, Mr. EDWARDS, Mr. DICKS, Mr. HOYER, and Mr. OBEY as the managers of the conference on the part of the House.

The message further announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2158) making appropriations for the Department of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1998, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. LEWIS of California, Mr. DELAY, Mr. WALSH, Mr. HOBSON, Mr. KNOLLENBERG, Mr. FRELINGHUYSEN, Mr. NEUMANN, Mr. WICKER, Mr. LIVINGSTON, Mr. STOKES, Mr. MOLLOHAN, Ms. KAPTUR, Mrs. MEEK, Mr. PRICE, and Mr. OBEY as the managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendment of the Senate to bill (H.R. 2160) making appropriations for Agriculture, Rural

Development, Food and Drug Administration, and related agencies programs for the fiscal year ending September 30, 1998, and for other purposes and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. SKEEN, Mr. WALSH, Mr. DICKEY, Mr. KINGSTON, Mr. NETHERCUTT, Mr. BONILLA, Mr. LATHAM, Mr. LIVINGSTON, Ms. KAPTUR, Mr. FAZIO, Mr. SERRANO, Ms. DELAURO, and Mr. OBEY as the managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2169) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1998, and for other purposes, and agrees to the conferences asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. WOLF, Mr. DELAY, Mr. REGULA, Mr. ROGERS, Mr. PACKARD, Mr. CALLAHAN, Mr. TIAHRT, Mr. ADERHOLT, Mr. LIVINGSTON, Mr. SABO, Mr. FOGLIETTA, Mr. TORRES, Mr. OLVER, Mr. PASTOR, and Mr. OBEY as the managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2203) making appropriations for energy and water development for the fiscal year ending September 30, 1998, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. MCDADE, Mr. ROGERS, Mr. KNOLLENBERG, Mr. FRELINGHUYSEN, Mr. PARKER, Mr. CALLAHAN, Mr. DICKEY, Mr. LIVINGSTON, Mr. FAZIO, Mr. VISCLOSKY, Mr. EDWARDS, Mr. PASTOR, and Mr. OBEY as the managers on the part of the House.

The message further announced that the House disagrees to the amendments of the Senate to the bill (H.R. 2209) making appropriations for the legislative branch for the fiscal year ending September 30, 1998, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. WALSH, Mr. YOUNG of Florida, Mr. CUNNINGHAM, Mr. WAMP, Mr. LATHAM, Mr. LIVINGSTON, Mr. SERRANO, Mr. FAZIO, Ms. KAPTUR, and Mr. OBEY as the managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2266) making appropriations for the Department of Defense for the fiscal year ending September 30, 1998, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. YOUNG of Florida, Mr. MCDADE, Mr. LEWIS of California, Mr. SKEEN, Mr. HOBSON, Mr. BONILLA, Mr. NETHERCUTT, Mr. ISTOOK, Mr. CUNNINGHAM, Mr. LIVINGSTON, Mr. MURTHA, Mr. DICKS, Mr. HEFNER, Mr. SABO, Mr. DIXON, Mr. VISCLOSKY, and Mr. OBEY as the managers on the part of the House.

MEASURES REFERRED

The following bill, previously received from the House of Representatives for the concurrence of the Senate, was read the first and second times by unanimous consent and referred as indicated:

H.R. 2035. An act to authorize the transfer of naval vessels to certain foreign countries; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THOMPSON, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 261. A bill to provide for biennial budget process and a biennial appropriations process and to enhance oversight and the performance of the Federal Government (Rept. No. 105–72).

By Mr. SPECTER, from the Committee on Veterans' Affairs, without amendment and with a preamble:

H.J. Res. 75. A joint resolution to confer status as an honorary veteran of the United States Armed Forces on Leslie Townes (Bob) Hope.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. WELLSTONE:

S. 1147. A bill to amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment services under private group and individual health coverage; to the Committee on Labor and Human Resources.

By Mr. D'AMATO:

S. 1148. A bill to amend title 49, United States Code, to require the forfeiture of counterfeit access devices and device-making equipment; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself, Mr. DURBIN, Mr. COVERDELL, Mr. SHELBY, and Mr. KYL):

S. 1149. A bill to amend title 11, United States Code, to provide for increased education funding, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HUTCHINSON:

S. Con. Res. 50. A concurrent resolution condemning in the strongest possible terms the bombing in Jerusalem on September 4, 1997; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WELLSTONE:

S. 1147. A bill to amend the Public Health Service Act, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment services under private group and individual health coverage; to the Committee on Labor and Human Resources.

THE SUBSTANCE ABUSE TREATMENT PARITY ACT OF 1997

Mr. WELLSTONE. Mr. President, today I rise to introduce legislation that will ensure that private health insurance companies pay for substance abuse treatment services at the same level that they pay for treatment for other diseases. In other words, it is meant to guarantee that insurance coverage for substance abuse treatment is provided in a nondiscriminatory manner. This bill, the Substance Abuse Parity Act of 1997, provides this assurance.

For too long, the problem of substance abuse has been viewed as a moral issue, rather than a disease. A cloak of secrecy has surrounded this problem, as people who have this disease are often ashamed and afraid to admit their problem, for fear that they will be seen as admitting a weakness in character. We have all seen portrayals of alcoholics and addicts that are intended to be humorous or derogatory, and only reinforce the biases against people who have problems with substance abuse. Can you imagine this type of portrayal of someone who has a cardiac problem, or who happens to carry a gene that predisposes them to diabetes?

Yet it has been shown that some forms of addiction have a genetic basis, and we still try to hide the seriousness of this problem. We forget that someone who has a problem with drugs or alcohol can look just like the person we see in the mirror, or the person who is sitting next to us on a plane. In fact, it is unlikely that any of us have not experienced substance abuse within our families or our circle of friends.

The statistics concerning substance abuse are startling. In a recent article in Scientific American, December 1996, it was reported that excessive alcohol consumption is estimated to cause more than 100,000 deaths in the United States each year. Of these deaths, 24 percent are due to drunken driving, 11 percent are homicides, and 8 percent are suicides. Alcohol contributes to cancers of the esophagus, larynx, and oral cavity, which account for 17 percent of the deaths. Strokes related to alcohol use account for another nine percent of deaths. Alcohol causes several other ailments such as cirrhosis of the liver. These ailments account for 18 percent of the deaths.

We know that alcohol and other drugs contribute to other problems as well. Addictive substances have the potential for destroying the person who is addicted, their family and their other relationships. In a 1993 Report to Congress on Alcohol and Health, the Secretary of Health and Human Services

stated that ''Alcohol is associated with a substantial proportion of human violence, and perpetrators are often under the influence of alcohol.'' There are high rates of alcohol and other drug involvement in domestic violence and child abuse. For example, in 1987, 64 percent of all reported child abuse and neglect cases in the city of New York were related to alcohol and other drug abuse. With respect to domestic violence, a study of over 2,000 American couples demonstrated that rates of domestic violence were almost 15 times higher in households where husbands were often drunk as compared to those households in which they were never drunk. And, alcohol has been shown to be present in over 50 percent of all incidents of domestic violence. In addition, substance use itself may result from direct experience with interpersonal violence, as demonstrated by a study of 472 women. This study showed that 87 percent of alcoholic women had been physically or sexually abused as children as compared to 59 percent of the nonalcoholic women in the study. We know that over 40 percent of motor vehicle crash fatalities are alcohol-related, and that many of the alcohol drinkers involved in these crashes have had long standing problems with alcohol abuse. It is estimated that over 25 percent of emergency department visits may be alcohol related, and that alcohol and other drug use accounts for at least 40 percent of hospital admissions.

Data from the 1996 National Household Survey on Drug Abuse, which is conducted by the Substance Abuse and Mental Health Services Administration, provide the following estimates of substance use in the United States:

ALCOHOL

There were about 9 million current alcohol, including beer, wine, and distilled spirits, drinkers under age 21 in 1996. Of these, 4.4 million were binge drinkers, including 1.9 million heavy drinkers.

MARIJUANA

In 1996, an estimated 10.1 million Americans were current, past month, marijuana or hashish users. This represents 4.7 percent of the population aged 12 and older.

Marijuana is by far the most prevalent drug used by illicit drug users. Approximately three-quarters, 77 percent of current illicit drug users were marijuana or hashish users in 1996.

COCAINE

The number of occasional cocaine users, people who used in the past year but on fewer than 12 days, was 2.6 million in 1996, similar to what it was in 1995. The number of users was down significantly from 1985, when it was 7.1 million.

HALLUCINOGENS

The rate of current use of hallucinogens among youth age 12–17 has nearly doubled in 2 years, 1.1 percent in 1994, 1.7 percent in 1995, and 2.0 percent in 1996.

HEROIN

There were an estimated 141,000 new heroin users in 1995, and there has been an increasing trend in new heroin use since 1992. A large proportion of these recent new users were smoking, snorting, or sniffing heroin, and most were under age 26. The rate of heroin initiation for the age group 12–17 reached historic levels.

We know what the problems are, and we can document them. But we have done little to treat the problems or prevent them. In order to decrease the violence, the domestic violence, child abuse, homicide, suicide, the motor vehicle crashes, the cancers and the other illnesses and deaths due to alcohol and drug use, we must treat the alcohol and drug abuse problems. But right now, even if treatment is available and accessible, it is often unaffordable, as many health plans do not pay for treatment for substance abuse at the same rate at which they pay for treatment of other diseases. This seems counterintuitive, given the relationship between substance use and other diseases. It would only seem logical that if we are willing to pay for the treatment of substance abuse, we would decrease costs of treatment for other diseases in the long run, as we would decrease the occurrence of those diseases that are related to substance abuse.

SAMHSA has summarized the importance of substance abuse treatment as follows:

Substance abuse adds substantially to the nation's total health care bill. Numerous studies show that providing adequate and accessible treatment for those with alcohol and illicit drug problems is the most effective method to improve the health of drug abusers and relieve the growing burden of drug-related health care costs. Treatment is a sound, long-term and cost-effective investment in America's future.

SUBSTANCE ABUSE AND HEALTH CARE COSTS

Approximately 35 percent of all AIDS cases are related to intravenous drug use, and over 60 percent of all pediatric AIDS cases are related to maternal exposure to HIV through drug use or sex with a drug user.

On the average, untreated alcoholics generally incur general health care costs that are at least 100 percent higher than those of the non-alcoholic. In the last 12 months before treatment, the alcoholic's costs are close to 300 percent higher.

More than 5 percent (221,000) of the 4 million women who give birth each year use illicit drugs during their pregnancy.

The Health Insurance Association of America estimates an expenditure of from $48,000 to $150,000 in costs of maternity care, physicians' fees and hospital charges for each delivery that is complicated by substance abuse.

The number of methamphetamine (speed)-related emergency room episodes increased by 35 percent (from 7,800 to 10,600) between the first half of 1994 and the first half of 1995.

HEALTH CARE AND TREATMENT

Chicago's Women's Treatment Center offers a wide variety of residential and outpatient programs for adolescent girls, pregnant women and women with young children. The Center has the only crisis nursery in Chicago, which provides care 24 hours a day to the infants and children of women undergoing medically supervised detoxification. As a result of the Women's Treatment Center's focus on responsible parenting, 67 drug-free babies have been born to women in treatment.

Substance abuse treatment reduces overall hospital admission rates by at least 38 percent. Hospital admissions for drug overdose decreased by 58 percent among those who had been treated.

Ninety-five percent of women reported uncomplicated births, free of illicit drugs, after one year of treatment.

The state Alcohol and Other Drug Authority in Minnesota has reported that, for chemical dependency clients, the state has saved approximately $22 million in annual health care costs by providing treatment.

So, it is apparent from these data that substance abuse treatment works, and can help reduce health care costs and costs to society. We need to ensure that health care insurance providers do not discriminate in their coverage of substance abuse treatment services.

The Substance Abuse Treatment Parity Act of 1997 provides for nondiscriminatory coverage of substance abuse treatment services by private health insurers. It does not require that substance abuse benefits be part of a health benefits package, but establishes a requirement for parity in coverage for those plans that offer substance abuse coverage.

Mr. President, my bill would prohibit private insurance providers from imposing caps, copayments, and deductibles and day and visit limits for substance abuse treatment services that differ from those that are described for other covered illnesses. In other words, private health insurers must treat substance abuse like any other disease. Covered services include inpatient treatment, including detoxification; nonhospital residential treatment; outpatient treatment, including screening and assessment, medication management, individual, group and family counseling and relapse prevention; and prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

Mr. President, the Substance Abuse Treatment Parity Act of 1997 is designed to take a large step toward decreasing the problem of substance abuse and its consequences. We can't afford not to provide this coverage.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1147

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Substance Abuse Treatment Parity Act of 1997''.

SEC. 2. PARITY IN SUBSTANCE ABUSE TREATMENT BENEFITS.

(a) GROUP HEALTH PLANS.—

(1) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—(A) Subpart 2 of part A of title XXVII of the Public Health Service Act (as added by section 604(a) of the Newborns' and Mothers' Health Protection Act of 1996 and

amended by section 703(a) of the Mental Health Parity Act of 1996) is amended by adding at the end the following new section:

"SEC. 2706. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and substance abuse treatment benefits, the plan or coverage shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

''(b) CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any substance abuse treatment benefits; or

''(2) to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(c) EXEMPTIONS.—

''(1) SMALL EMPLOYER EXEMPTION.—

''(A) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

''(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term 'small employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

''(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) DEFINITIONS.—For purposes of this section—

''(1) TREATMENT LIMITATION.—The term 'treatment limitation' means, with respect to benefits under a group health plan or health insurance coverage, any day or visit limits imposed on coverage of benefits under the plan or coverage during a period of time.

''(2) FINANCIAL REQUIREMENT.—The term 'financial requirement' means, with respect to benefits under a group health plan or health insurance coverage, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan or coverage.

''(3) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include substance abuse treatment benefits.

''(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term 'substance abuse treatment benefits' means benefits with respect to substance abuse treatment services.

''(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term 'substance abuse services' means any of the following items and services provided for the treatment of substance abuse:

''(A) Inpatient treatment, including detoxification.

''(B) Non-hospital residential treatment.

''(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

''(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

''(6) SUBSTANCE ABUSE.—The term 'substance abuse' includes chemical dependency.

''(f) NOTICE.—A group health plan under this part shall comply with the notice requirement under section 713(f) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this section as if such section applied to such plan.

''(g) SUNSET.—This section shall not apply to benefits for services furnished on or after September 30, 2002.''.

(B) Section 2723(c) of such Act (42 U.S.C. 300gg–23(c)), as amended by section 604(b)(2) of Public Law 104–204, is amended by striking ''section 2704'' and inserting ''sections 2704 and 2706''.

(2) ERISA AMENDMENTS.—(A) Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as added by section 603(a) of the Newborns' and Mothers' Health Protection Act of 1996 and amended by section 702(a) of the Mental Health Parity Act of 1996) is amended by adding at the end the following new section:

"SEC. 713. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and substance abuse treatment benefits, the plan or coverage shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

''(b) CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any substance abuse treatment benefits; or

''(2) to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(c) EXEMPTIONS.—

''(1) SMALL EMPLOYER EXEMPTION.—

''(A) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

''(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term 'small employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

''(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) DEFINITIONS.—For purposes of this section—

''(1) TREATMENT LIMITATION.—The term 'treatment limitation' means, with respect to benefits under a group health plan or health insurance coverage, any day or visit limits imposed on coverage of benefits under the plan or coverage during a period of time.

''(2) FINANCIAL REQUIREMENT.—The term 'financial requirement' means, with respect to benefits under a group health plan or health insurance coverage, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan or coverage.

''(3) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include substance abuse treatment benefits.

''(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term 'substance abuse treatment benefits' means benefits with respect to substance abuse treatment services.

''(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term 'substance abuse services' means any of the following items and services provided for the treatment of substance abuse:

''(A) Inpatient treatment, including detoxification.

''(B) Non-hospital residential treatment.

''(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

''(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

''(6) SUBSTANCE ABUSE.—The term 'substance abuse' includes chemical dependency.

''(f) NOTICE UNDER GROUP HEALTH PLAN.—The imposition of the requirements of this section shall be treated as a material modification in the terms of the plan described in section 102(a)(1), for purposes of assuring notice of such requirements under the plan; except that the summary description required to be provided under the last sentence of section 104(b)(1) with respect to such modification shall be provided by not later than 60 days after the first day of the first plan year in which such requirements apply.

''(g) SUNSET.—This section shall not apply to benefits for services furnished on or after September 30, 2002.''.

(B) Section 731(c) of such Act (29 U.S.C. 1191(c)), as amended by section 603(b)(1) of Public Law 104–204, is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(C) Section 732(a) of such Act (29 U.S.C. 1191a(a)), as amended by section 603(b)(2) of Public Law 104–204, is amended by striking ''section 711'' and inserting ''sections 711 and 713''.

(D) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 712 the following new item:

''Sec. 713. Parity in the application of treatment limitations and financial requirements to substance abuse treatment benefits.''.

(3) INTERNAL REVENUE CODE AMENDMENTS.—(A) Subtitle K of the Internal Revenue Code of 1986 (as added by section 401(a) of the Health Insurance Portability and Accountability Act of 1996) is amended—

(i) by striking all that precedes section 9801 and inserting the following:

''Subtitle K—Group Health Plan Requirements

''CHAPTER 100. Group health plan requirements.

''CHAPTER 100—GROUP HEALTH PLAN REQUIREMENTS

''Subchapter A. Requirements relating to portability, access, and renewability.

''Subchapter B. Other requirements.

''Subchapter C. General provisions.

''Subchapter A—Requirements Relating to Portability, Access, and Renewability

''Sec. 9801. Increased portability through limitation on preexisting condition exclusions.

''Sec. 9802. Prohibiting discrimination against individual participants and beneficiaries based on health status.

''Sec. 9803. Guaranteed renewability in multiemployer plans and certain multiple employer welfare arrangements.'',

(ii) by redesignating sections 9804, 9805, and 9806 as sections 9831, 9832, and 9833, respectively,

(iii) by inserting before section 9831 (as so redesignated) the following:

''Subchapter C—General Provisions

''Sec. 9831. General exceptions.

''Sec. 9832. Definitions.

''Sec. 9833. Regulations.'', and

(iv) by inserting after section 9803 the following:

''Subchapter B—Other Requirements

''Sec. 9811. Parity in the application of treatment limitations and financial requirements to substance abuse treatment benefits.

''SEC. 9811. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and substance abuse treatment benefits, the plan or coverage shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

''(b) CONSTRUCTION.—Nothing in this section shall be construed—

''(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any substance abuse treatment benefits; or

''(2) to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

''(c) EXEMPTIONS.—

''(1) SMALL EMPLOYER EXEMPTION.—

''(A) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

''(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term 'small employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

''(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) DEFINITIONS.—For purposes of this section—

''(1) TREATMENT LIMITATION.—The term 'treatment limitation' means, with respect to benefits under a group health plan or health insurance coverage, any day or visit limits imposed on coverage of benefits under the plan or coverage during a period of time.

''(2) FINANCIAL REQUIREMENT.—The term 'financial requirement' means, with respect to benefits under a group health plan or health insurance coverage, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan or coverage.

''(3) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include substance abuse treatment benefits.

''(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term 'substance abuse treatment benefits' means benefits with respect to substance abuse treatment services.

''(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term 'substance abuse services' means any of the following items and servvices provided for the treatment of substance abuse:

''(A) Inpatient treatment, including detoxification.

''(B) Non-hospital residential treatment.

''(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

''(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

''(6) SUBSTANCE ABUSE.—The term 'substance abuse' includes chemical dependency.

''(f) SUNSET.—This section shall not apply to benefits for services furnished on or after September 30, 2002.''.

(B) CONFORMING AMENDMENTS.—

(i) Chapter 100 of such Code (as added by section 401 of the Health Insurance Portability and Accountability Act of 1996 and as previously amended by this section) is further amended—

(I) in the last sentence of section 9801(c)(1), by striking ''section 9805(c)'' and inserting ''section 9832(c)'';

(II) in section 9831(b), by striking ''9805(c)(1)'' and inserting ''9832(c)(1)'';

(III) in section 9831(c)(1), by striking ''9805(c)(2)'' and inserting ''9832(c)(2)'';

(IV) in section 9831(c)(2), by striking ''9805(c)(3)'' and inserting ''9832(c)(3)''; and

(V) in section 9831(c)(3), by striking ''9805(c)(4)'' and inserting ''9832(c)(4)''.

(ii) Section 4980D of such Code (as added by section 402 of the Health Insurance Portability and Accountability Act of 1996) is amended—

(I) in subsection (c)(3)(B)(i)(I), by striking ''9805(d)(3)'' and inserting ''9832(d)(3)'';

(II) in subsection (d)(1), by inserting ''(other than a failure attributable to section 9811)'' after ''on any failure'';

(III) in subsection (d)(3), by striking ''9805'' and inserting ''9832'';

(IV) in subsection (f)(1), by striking ''9805(a)'' and inserting ''9832(a)''.

(iii) The table of subtitles for such Code is amended by striking the item relating to subtitle K (as added by section 401(b) of the Health Insurance Portability and Accountability Act of 1996) and inserting the following new item:

''SUBTITLE K. Group health plan requirements.''

(b) INDIVIDUAL HEALTH INSURANCE.—(1) Part B of title XXVII of the Public Health Service Act (as added by section 605(a) of the Newborn's and Mother's Health Protection

Act of 1996) is amended by inserting after section 2751 the following new section:

"SEC. 2752. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE BENEFITS.

''(a) IN GENERAL.—The provisions of section 2706 (other than subsection (e)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

''(b) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 713(f) of the Employee Retirement Income Security Act of 1974 with respect to the requirements referred to in subsection (a) as if such section applied to such issuer and such issuer were a group health plan.''.

(2) Section 2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2)), as added by section 605(b)(3)(B) of Public Law 104–204, is amended by striking ''section 2751'' and inserting ''sections 2751 and 2752''.

(c) EFFECTIVE DATES.—(1) Subject to paragraph (3), the amendments made by subsection (a) shall apply with respect to group health plans for plan years beginning on or after January 1, 1999.

(2) The amendment made by subsection (b) shall apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after such date.

(3) In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made subsection (a) shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) January 1, 1999.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

(d) COORDINATED REGULATIONS.—Section 104(1) of Health Insurance Portability and Accountability Act of 1996 is amended by striking ''this subtitle (and the amendments made by this subtitle and section 401)'' and inserting ''the provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, and the provisions of parts A and C of title XXVII of the Public Health Service Act, and chapter 1000 of the Internal Revenue Code of 1986''.

By Mr. D'AMATO:

S. 1148. A bill to amend title 49, United States Code, to require the forfeiture of counterfeit access devises and device-making equipment; to the Committee on the Judiciary.

THE COUNTERFEIT ACCESS DEVICES ACT OF 1997

Mr. D'AMATO. Mr. President, I rise today to introduce legislation which will strike a blow against counterfeiters and other criminals who commit cellular telephone fraud and credit card fraud.

These criminal activities cost their respective industries hundreds of millions of dollars annually, and these costs are passed down to consumers who use credit cards and cellular telephones. The cellular telephone industry alone loses $650 million each year due to counterfeit or cloned telephone. The credit card industry faces a similar problem.

The criminals who perpetrate these frauds use specialized equipment to clone cell phones and credit cards to create phony copies which can be sold on the street or used to rack up thousands of dollars in unauthorized credit card purchases and telephone calls. There is no legitimate reason for an individual to possess this special equipment used to create these phony copies. This equipment is only useful to create counterfeit credit cards and cell phones.

Under current law, this equipment is actually returned to the criminal after he serves his sentence. The equipment is frequently used again to commit the same crimes over and over. The Government cannot confiscate the equipment without a separate expensive and time-consuming forfeiture proceeding.

Mr. President, it is preposterous that the Government must return the tools used to commit these crimes to criminals, even if they are convicted. These criminals are exploiting a loophole in the Federal forfeiture laws. My bill will close this loophole.

My bill would amend title 49 of the United States Code to make this equipment, as well as the counterfeit credit cards and telephones themselves, contraband. This designation would make it a Federal crime to possess these items. My bill would also require that these items must not be returned to the criminals.

Mr. President, these crimes take a tremendous toll on consumers whose telephones and credit cards are cloned by this equipment. By the time the consumer discovers that his or her telephone or credit card has been copied, the criminals usually have racked up thousands of dollars in unauthorized charges. This can have a devastating effect on consumers' credit ratings, rendering them unable to purchase a car or home or start a business. These problems can take years to correct.

Last Congress, I introduced a similar bill, S. 1380. Unfortunately, the session ended before Congress was able to act. However, this bill is not without precedent. A similar measure was passed last year regarding counterfeit videos and music. These items are now considered contraband under the new law. Industry leaders and law enforcement authorities enthusiastically support this legislation.

Mr. President, the Government must stop unwittingly aiding criminals to swindle hundreds of millions of dollars at the expense of consumers and the cellular telephone and credit card industries. My bill would close this outrageous loophole and help law enforcement crack down on these brazen criminals.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FORFEITURES RELATING TO COUNTERFEIT ACCESS DEVICES.

Section 80302(a) of title 49, United States Code, is amended—

(1) in paragraph (5), by striking ''or'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(7) a counterfeit access device or any device-making equipment (as those terms are defined in section 1029 of title 18).''.

By Mr. GRASSLEY (for himself, Mr. DURBIN, Mr. COVERDELL, Mr. SHELBY, and Mr. KYL):

S. 1149. A bill to amend title 11, United States Code, to provide for increased education funding, and for other purposes; to the Committee on the Judiciary.

THE INVESTMENT IN EDUCATION ACT OF 1997

Mr. GRASSLEY. Mr. President, I rise today to introduce the Investment in Education Act of 1997. This bill will close gaping loopholes in the current bankruptcy code which allow companies that declare bankruptcy to cheat schools out of badly needed education funds. This bill has the support of Senator DURBIN, the ranking member on my subcommittee. In an effort to work in a truly bipartisan way, I have reached out to the administration and have made several changes in the bill to accommodate the White House. As of now, I have received very positive signals from the administration and I'm optimistic that the administration will come out in favor of the bill.

As we all know, our Nation's educators face difficult challenges every day, whether from crumbling facilities or classes that are too large because a school district can't afford additional teachers. Money won't solve every one of the problems facing our schools. But protecting funding for education from losses due to bankruptcies will do a great deal of good. That's why I believe that the Congress should enact the Investment in Education Act quickly to stem a federally created drain on already scarce education resources.

As President Clinton has said, the era of big Government is over, and we have a responsibility in Congress to make certain that Federal laws—like the bankruptcy code—do not tie the hands of State and local governments. My bill will close bankruptcy law loopholes and provide millions of education dollars without raising taxes or spending any additional Federal money.

Under current law, the bankruptcy code allows a Federal judge to retroactively lower the assessed value of a bankrupt debtor's property—often in

direct conflict with State laws. And another part of the bankruptcy code artificially subordinates local property tax revenues.

All of this lowers the amount of money available for education since education is overwhelmingly dependant on local property tax revenue. In fact, there have been instances in which school districts have had to refund money they have already received and spent. In this way, the bankruptcy code is taking money earmarked for education and spending it instead on administrative costs such as lawyers' fees. We need to close these loopholes to put kids, and not bankruptcy lawyers, at the top of our Nation's priorities.

During a hearing which I chaired before the Subcommittee on Administrative Oversight and the Courts, I found out about a school district in Texas that lost enough money in one case to provide 375,000 meals for needy children. And I heard testimony about a school that could not rebuild its kindergarten which had been destroyed by a tornado as a result of money lost in a bankruptcy case earmarked for the school. In the State of Texas alone, between just a few school districts, about $70 million earmarked exclusively for education are currently at risk. Because the Administrative Office of the United States Courts does not keep comprehensive records on this, we don't know how big this problem is. But we know that it's a substantial problem. I say let's fix it now.

The Investment in Education Act will close these bankruptcy loopholes so that there will be more money for meals for needy children, more money to pay for teachers' salaries, and more money to repair dilapidated schools. By passing my bill, we can ensure that our schoolchildren get the education dollars they need.

Finally, section 3 of the Investment in Education Act will be of great help to children who are owned back child support. Section 3 of the bill will permit children and spouses to go into the exempt assets of the bankrupt debtor in order to make sure that unscrupulous deadbeats can't get out of paying child support by hiding their assets in bankruptcy. I don't think that Congress ought to let the bankruptcy code stick it to kids and so my bill corrects that.

This bill has bipartisan support and has been endorsed by the National School Boards Association and the Iowa Association of School Boards. And as I mentioned earlier, I am optimistic that the administration will come out to support the bill. I know that time may be short, but since this bill has bipartisan support, I hope that we can pass it quickly. Mr. President, I have several letters supporting my bill and several news articles regarding the negative effect of bankruptcy on education. I ask that they be entered into the RECORD and that the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1149

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Investment in Education Act of 1997''.

SEC. 2. TREATMENT OF CERTAIN LIENS

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting ''(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)'' after ''under this title''; and

(2) in subsection (b)(2), after ''507(a)(1)'' and before the comma following thereafter insert ''(except that such expenses, other than claims for wages, salaries or commissions which arise after the filing of a petition, shall be limited to expenses incurred under Chapter 7 of this title and shall not include expenses incurred under Chapter 11 of this title)''; and

(3) by adding at the end the following:

''(e) Before subordinating a tax lien on real or personal property of the estate which has arisen by virtue of state law, the trustee shall—

''(1) exhaust the unencumbered assets of the estate; and

''(2) in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.''.

''(f) Notwithstanding the exclusion of ad valorem tax liens set forth in this Section, claims for wages, salaries and commissions entitled to priority under Section 507(a)(3) or claims for contributions to an employee benefit plan entitled to priority under 507(a)(4) may be paid from property of the estate which secures a tax lien, or the proceeds of such property subject to the requirements of Subsection 724(e).''

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting ''; or''; and

(3) by adding at the end the following:

''(C) the amount or legality of any amount arising in connection with an ad valorem tax real or personal property of the estate if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.''.

SEC. 2. ENFORCEMENT OF CHILD AND SPOUSAL SUPPORT.

Section 552(c)(1) of title 11, United States Code, is amended by inserting ''provided that, notwithstanding any federal or state law relating to the enforcement of liens or judgments on exempted property, exempt property shall be liable for debts of a kind specified in Section 523(a)(5) of this title,'' at the end of the subsection.

IOWA ASSOCIATION OF
SCHOOL BOARDS,
Des Moines, IA, September 2, 1997.

Hon. CHARLES E. GRASSLEY,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR GRASSLEY: I am writing to thank you for introducing and sponsoring ''The Investment in Education Act of 1997''. This important legislation will pump millions of badly-needed dollars into schools by closing loopholes in the federal bankruptcy code which unscrupulous debtors use to avoid paying delinquent property taxes. These delinquent taxes go to fund important education programs such as school lunch programs for needy children and school construction and renovation projects. Thus, a loss of these revenues mean fewer school lunches, school buildings in disrepair and fewer teachers, since property tax revenues also fund teachers' salaries.

This federally created drain on local revenues intended for education, if not checked in the near future, will obviously have a devastating impact on our ability to provide our children with a quality education. Companies which declare bankruptcy should not be allowed to use federal law to shortchange our children's education.

With the federal government turning more power over to the states, Congress has the responsibility to remove federal laws—like these bankruptcy loopholes—which tie the hands of local government. ''The Investment in Education Act of 1997'' is a step in that direction. It increases education funding by returning lost revenue to schools instead of raising taxes and without sending local revenues to Washington.

On behalf of Iowa's 377 school districts, thank you for your leadership in finding a solution to this problem.

Sincerely,

RONALD M. RICE, E.D.,
Executive Director.

OFFICE OF
SIOUX COUNTY TREASURER,
Orange City, IA, July 29, 1997.

U.S. Senator CHARLES GRASSLEY,
ATTENTION: John McMickle,
Senate Hart Building,
Washington, DC.

DEAR MR. MCMICKLE: Thank you for taking the time to discuss the issues and concerns regarding bankruptcy and its affect on local taxing bodies here in Iowa.

I have been following with interest the proposed changes to the Federal Bankruptcy statutes as presented by the National Association of County Treasurers and Finance Officers (NACTFO) and concur with the findings and recommendations in their report. I believe that you have a copy of the report, entitled ''Local Governments Recommendations for Reform of the United States Bankruptcy Code''.

Following our conversation of July 23, I did send an e-mail message to all County Treasurers in Iowa, requesting information on the affect of bankruptcy on tax collections. To date, I have had a limited response to that request. Approximately ten percent of the treasurers have contacted me. Overall, their indications are that the statutes do not present any big problems in Iowa. The main concern would be the delay in payment of the taxes due.

An example here in Sioux County is to the point. In the Boyden-Hull School District, $13,457 in taxes remain uncollected due to bankruptcy by two property owners. $7,806 of this amount due is to go to the local community school district, if and when collected. These dollars are needed by the local school to keep programs running.

We have been fortunate in the Iowa Bankruptcy Courts to not have any judges that want to adjust amounts due on our priority claims for taxes. We have usually received the amounts that we file with the courts, although usually without interest due to late payment.

My reading of the proposed changes indicates that the judges would not have the latitude to change amounts due, nationwide, and that would serve us well. Both of the

cases affecting the Boyden-Hull School District are filed outside of Iowa and we are at the mercy of the local bankruptcy judges on collection.

Thank you for your interest in the affect of this legislation at the local level. If I may answer any further questions that you or the Senator would have, please contact me.

Sincerely,

ROBERT R. HAGEY,
Treasurer.

POLK COUNTY ATTORNEY,
Des Moines, IA, July 31, 1997.

Senator CHARLES E. GRASSLEY,
Chairman, U.S. Senate Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, Hart Senate Office Building, Washington, DC.

DEAR SENATOR GRASSLEY: John McMickle of your office was kind enough to send me a copy of your proposed ''Investment in Education Act of 1997'', amending sections 724(b) and 505(a) of the Bankruptcy Code. I do not practice regularly in Bankruptcy and so may not be as qualified to comment as many of the people you will be hearing from, but I do represent Iowa's largest county in its attempts to collect overdue property taxes in those situations where Bankruptcy Court involvement is unavoidable. I would strongly support your attempt to reduce the impact on local governments of the Bankruptcy Code's artificial lien priority shifting and pre-emption of state law.

As you know, because of Iowa's consolidated tax system, a County is responsible for collecting taxes not only for itself but for the cities, school districts and other public bodies in the jurisdiction. The Treasurer is an involuntary creditor. He or she cannot evaluate and react to lending risks the way a normal creditor can. The Treasurer cannot police the debt or collateral or take additional steps to protect the County when a debtor is in trouble. Taxes are limited, so the County cannot build a reserve fund if it sees danger ahead. It is difficult to reduce general relief or quit collecting garbage or layoff teachers when economic conditions result in delayed tax collections. That is often when people look to government for additional assistance.

In Iowa, state law requires a wait of 21 months or more after a missed September local tax payment before property can be taken to pay the tax debt. This is reasonable protection for property owners who may be in trouble. Government is, after all, a service, not a business trying to make money off of the debt. Our procedure does, however, often result in local taxes being put off while other more aggressive creditors are paid. To then allow these creditors priority over local taxes, as the present section 724(b) does in many instances, seems eminently unfair. These junior lienholders were aware of tax priorities at the time they took their liens and to allow them to jump over local government seems, to me, to be a pure windfall. Your bill would correct this by keeping everyone in the same lineup to which they originally agreed.

We have had particular problems dealing with out of state bankruptcies involving Iowa properties but courts which do not understand the Iowa tax system and the fact that property is valued for tax purposes twenty-one months ahead of the first payment based on that value. We have often lost moderate payments simply because we cannot fly off to another state or hire a lawyer there to explain our case. Your proposal to reduce the impact of section 724(b) would also indirectly, but greatly, benefit Iowa local governments in this regard.

Finally, as to your proposal to limit the retroactive impact of section 505(a), I can only say that in my own experience I have found this section to be used primarily as a negotiating tool by debtor and junior creditor lawyers in Chapter 11 cases, who use the threat of redetermination to browbeat the County into compromising taxes to provide a larger income stream for junior lienholders. I strongly support your bill's effort to limit the impact of this section on local government as well.

Thank you for your consideration and good luck in convincing your associates of the desirability of your proposals.

Very Truly Yours,

MICHAEL J. O'KEEFE,
Assistant Polk County Attorney.

SCHOOLS TURN TO INCOME TAX—MOST DISTRICTS ALREADY CHARGE AN INCOME SURTAX. SHOULD DES MOINES JOIN THEM?

Iowa school districts increasingly are turning to a new tax—an income surtax—to supplement the property taxes and state aid they've long relied on.

A movement is under way for Des Moines to join the trend.

The school-district income surtax may not be familiar everywhere. It has not been used by the schools in most of Iowa's largest cities, but 204 of the state's 379 school districts now use it to raise extra money for education.

It's a simple concept that can raise a lot of cash for classroom programs, new school buses, asbestos abatement, routine maintenance, and remodeling. It works this way: A school district approves a levy(ies) for one or more of those purposes, either by a vote of the school board or citizens, and designates the income surtax as a source of revenue.

Each person in the district who pays state income taxes is then charged an additional amount to meet that obligation—up to 20 percent of his or her state income-tax bill. On a state tax bill of $200, at the maximum 20 percent rate, you'd send the state an extra $40 to be returned to your school district. (Counties may also use the income surtax for emergency medical services. Taxpayers who live where both their school district and county have an income surtax don't pay more than 20 percent combined.)

Think of the income surtax as a tip-automatically tacked onto a restaurant tab, and districts have been increasingly hungry for it.

Why? Growing pressure on their budgets, including higher expectations in general, more low-income students who need help to succeed and aging buildings that need to be renovated or replaced.

Iowa law first allowed use of the income surtax for school districts in 1972, under restricted circumstances. Use of the income surtax increased after lawmakers OK'd an ''enrichment levy'' in 1975, which let school districts spend extra local money on educational improvement through either the income surtax, property taxes or both. But the explosion in the number of districts with an income surtax came when the ''instructional support levy'' replaced the enrichment levy in 1991, with state money part of the bargain.

From Ackley-Geneva to Woodbury Central—and in districts like Ames, Decorah and Sioux City—the income surtax raised a total of $27.2 million statewide for the 1996–97 school year that ended June 30. That compares to $1.9 million just 10 years earlier. Of that $27.2 million, $24.6 million went to the instructional support levy (which also got $43.3 million in property taxes and $14.8 million in state money, with the state paying less now than it originally promised).

The income surtax raised another $72,000 for the educational improvement levy, a one-time opportunity for school districts to boost their budgets that could be put in place only in the 1991–92 school year and continued until rescinded by the school board. (Just four districts have it). The income surtax raised nothing in 1996–97 for the asbestos levy. It raised $2.5 million for the physical plant and equipment levy.

Who has the income surtax? Rural school districts predominantly, where the push for it began as a way to reduce reliance on property taxes and keep school budgets healthy, although plenty of cities participate. Iowa City, for example, raised the most—$2.6 million—this past school year for the instructional support levy. In the immediate Des Moines area, only the Bondurant-Farrar, Southeast Polk and North Polk school districts have the income surtax.

The surtax has been proposed for the Des Moines school district as a means to move ahead the $315 million Vision 2005 plan for updating its 63 buildings.

Residents of the Des Moines district paid $124.5 million in state income tax in 1996. Based on that year's incomes, each 1 percent of surtax would bring in about $1.2 million for the school district. The talk is of needing nearly $12 million annually from the surtax, which would require nearly a 10 percent rate.

Part of the appeal of the income surtax is that it spreads the tax burden more equitably than property taxes or sales taxes, and businesses are likely to support it since they don't pay it. Part of the drawback is that it stands to increase the differences in tax burdens among local school districts, perhaps putting Des Moines at a further competitive tax disadvantage.

Somehow Des Moines has to settle on a way to come up with money it needs for its schools, and a tax increase of some sort is inevitable.

Whether that ought to include the income surtax needs a careful look, one taken knowing that many other Iowa communities have found that it works for them.

[School Board News, Aug. 19, 1997]

SCHOOLS LOSE WHEN FIRMS GO BANKRUPT

Your school system might be missing out on thousands of dollars every year because corporations involved in bankruptcy proceedings are able to get their tax obligations cut.

The Dallas public school system, for example, is losing $450,000 during the current year, due to a federal law that makes it virtually impossible for school districts to collect tax revenue from businesses that have declared bankruptcy.

Accordingly to Dallas Superintendent Yvonne Gonzalez, the district could have used this money to hire 15 extra teachers to reduce class sizes or provide $150 in school supplies for more than 3,000 teachers. ''We anticipate an equal or greater loss each year for the foreseeable future,'' she says.

That's because Dallas, like most local school districts across the nation, depends heavily on ad valorem taxes, which are assessed on businesses and individuals based on the value of property.

When businesses declare bankruptcy, however, school districts and other local governments tend to be last in line to collect the back taxes owed by property owners. Lawyers and banks holding mortgage liens are paid first. As a result, schools often never see the money they are owed, and in some cases, are required to refund taxes already received.

NSBA supports federal legislation to correct this problem. The Investment in Education Act would amend the federal bankruptcy code to increase local revenues derived from property taxes.

The Senate Judiciary Committee's Subcommittee on Administrative Oversight and

the Courts held a hearing on the bill Aug. 1. The bipartisan measure will be formally introduced in September by subcommittee chair Charles E. Grassley (R-Iowa) and Sen. Richard J. Durbin (D-III).

A description of the bill prepared by Sen. Grassley's office notes that ''virtually every state has experienced some revenue shortfall'' in school funding, due to two provisions in the bankruptcy code. The issue has been getting a lot of attention in Texas lately, however, because the state experienced so many real estate bankruptcies in the early 1990s.

Elizabeth Weller of the Dallas law firm Blair, Goggan, Sampson and Meeks notes that the Houston school district lost $1 million in a single case. Weller, who represents some 200 clients on this issue, a third of whom are Texas school districts, adds that in the past few years, the Fort Worth Independent School District (ISD) lost more than $480,000 in a total of four cases; the Dallas ISD lost nearly $450,000 in six cases; and the Lake Worth ISD $357,000 in a single case.

Section 505(a) of the bankruptcy code gives bankruptcy judges broad power to overrule property valuation decisions. This means a judge can decide to reduce a business's tax burden to ensure that the company's debtors can receive more of what they are owed.

Debtors often seek to have the taxable value of property reduced for as much as 10 years before the bankruptcy filing and request a refund of taxes already paid. Current law allows judges to approve these requests.

The bill would amend Section 505(a) to permit a bankruptcy court to reverse a property valuation decision only when the bankruptcy debtor has the right to challenge such a decision under applicable nonbankruptcy law.

Section 724(b) requires that most other claims on a bankruptcy estate be paid before ad valorem liabilities. Thus, various expenses, including lawyers' fees, are paid before and at the expense of tax liabilities, eventually forcing local jurisdictions to accept much less in delinquent back taxes than they would otherwise be entitled to receive—if they receive anything at all.

The bill would amend Section 724(b) to provide that ad valorem taxes protected by liens are paid ahead of other expenses, increasing the likelihood that local jurisdictions receive the same revenues they would have received if the company didn't file bankruptcy.

''My clients are sympathetic to wage claimants and others holding priority claims'' under the bankruptcy code, Weller says. They are citizens that serve and protect,'' she says. School districts are not asking for a special priority; they just want to be treated like any other creditor.

Weller says there's been ''definitely a lot more cases'' on this issue in the past few years, even though there hasn't been an increase in corporate bankruptcies as there has among individuals. What has changed in that ''corporate attorneys have become more aware of how they can use the law to avoid paying taxes.''

One of several examples cited by Weller involves the bankruptcy of Merchants Fast Motor Lines. Taxes secured by liens on personal property were reduced by a bankruptcy court's application of Sections 505(a) and 724(b).

That resulted in five county governments, three city governments, and the school districts of Dallas, Houston, and Irving losing a total of more than $70,890. The taxing entities face the threat of additional tax losses when the properties are sold.

In some cases, a bank holding the mortgage on a property demands that the seller declare bankruptcy so the taxes will be reduced, thus increasing its profits from the sale.

That's what happened to the Hurst Euless Bedford Independent School District in Texas, which filed suit in state court in May 1992 to collect delinquent taxes for a company for 1989 and 1990.

The day before the case was set to go to trial, the debtor filed bankruptcy, attorney Barbara M. Williams said at the hearing. The company succeeded in getting the taxes reduced for 1989 and 1990, even though the debtor did not foreclose upon the property until 1991. The property value was reduced more than $1.5 million, and the school district lost more than $61,000 in tax revenue. The debtor then filed a motion to dismiss the bankruptcy.

A single bankruptcy can have a major impact on a small school district. For example, when the Lancaster, Texas, school district was involved in a legal battle over the bankruptcy and foreclosure of a country and western bar, it succeeded in obtaining $150,000 in back taxes, Weller notes. That money was enough to restore kindergarten for the district's schoolchildren, which had been eliminated when the school suffered severe tornado damage.

LANCASTER INDEPENDENT SCHOOL DISTRICT,
Lancaster, TX, July 28, 1997.

Senator CHARLES E. GRASSLEY,
Senate Judiciary Committee,
SH–325 Hart Senate Office Building,
Washington, DC.

RE: Proposed Changes to Bankruptcy Code §§ 724(b) and 505.

DEAR SENATOR GRASSLEY: I am very pleased to write this letter in support of your efforts to modify the Bankruptcy Code to make revenue recovery easier for local governments. As a small suburban school district, the Lancaster Independent School District has felt the effects of debtors using bankruptcy as a way to avoid paying ad valorem taxes. In one particular case, a debtor avoided payment of taxes for almost ten years before the tax-laden property was sold through a bankruptcy plan to a new owner who paid the taxes. As a result of this account being resolved, the School District collected more than $130,000 and was able to fund fullday kindergarten. I am attaching an article from our local newspaper that describes the importance of the payment of this account.

Although the example I have given would not have been specifically affected by your proposed changes to the Bankruptcy Code, it represents the types of issues facing local governments who cannot collect essential revenue because of abuses of the bankruptcy process by property owners. In our case, the issue was much more than a matter of an individual paying his fair share of taxes. For Lancaster ISD, this was a matter of whether or not we could provide essential public services.

Thank you very much for your actions on behalf of local governments. Please let me know if I can provide any additional assistance in this effort.

Sincerely,

BILL WARD,
Superintendent.

[Today Lancaster, Aug. 10, 1997]

MONEY IN THE BANK—LISD RECEIVES BIGGEST BACK TAXES PAYMENT

(By Chuck Bloom)

Gary Faunce is a happy man. Happier than usual.

The Lancaster school district top finance man is breathing a little easier with an infusion of more than $133,000 in back taxes paid by the LISD's most notorious delinquent account.

Bear Creek/GID II, representing the Crystal Chandelier, delivered payment of $133,377 July 24 to the district's tax attorneys, Blair, Coggan, Sampson and Meeks, closing out a ''difficult chapter'' in the district's financial life, Faunce said.

''This helps us make next year's budget and it certainly lifted us through this year's budget.'' he said. ''It has been very helpful to fund a few programs.''

Faunce said much of the funds would be earmarked to cover the cost of full-day kindergarten in the LISD, which begins this Monday for all 5-year-olds.

The Crystal Chandelier, located at Bear Creek Road and I–35, was purchased by John Drain earlier this year, and worked with BGSM to resolve the delinquent tax problem.

''With the property in the hands of a new owner, we are hopeful that it will remain off the delinquent tax roll,'' said Nancy Primeaux, BGSM regional manager. She said her firm would monitor the GID account ''to ensure the property's prior history is not repeated.''

In addition, the district received $6,915 from Jordan Tractor and Marine, plus payment on five other accounts, Primeaux said.

Needham Carpets, which is subject to seizure activity, had its bankruptcy filing dismissed ''with prejudice'' by the Bankruptcy Court. The ruling prevents Needham from filing for bankruptcy for the next 12 months, and BGSM can proceed with its litigation and seizure efforts.

The LISD has been working under an extremely tight financial cloud, due in part to the large amount of back taxes owed.

NORTH CAROLINA LEAGUE OF MUNICIPALITIES,
August 14, 1997.

Hon. LAUCH FAIRCLOTH,
317 Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FAIRCLOTH: We are aware of proposed amendments to the Bankruptcy Code that will ensure better local tax collection and administration when a taxpayer files for bankruptcy. We support these amendments, included in Senator Grassley's Investment in Education Act of 1997, that amend Sections 724 and 505(a)(2) of Title 11 of the US Code.

The amendment to Section 724 will prevent the property tax lien from being subordinated to other liens when property is sold free and clear of liens during bankruptcy. This is already the case under North Carolina law, as has been held and affirmed by our courts, if the tax collector reads the notice carefully enough to understand there is to be a sale free and clear of liens and if the collector knows to contact the city or county attorney and request that an objection be filed to the sale.

Under existing Section 505, a bankruptcy court can redetermine the value of property for tax purposes and recompute the tax owed, if the debtor had not appealed the value to the Board of Equalization and Review, and this is true even though the time for making an appeal to the Board has expired. This has happened in several cases in North Carolina, and the taxes were always recomputed downward. The proposed amendment to Section 505 prohibits a bankruptcy court from making this reassessment if the time for making an appeal under state law has expired.

We appreciate your consideration and, in the interest of more equitable property tax collection and administration, we feel these are good amendments and would request your support. Would you please share your position on the amendments?

Sincerely yours,

TERRY A. HENDERSON,

Director of Advocacy.
S. ELLIS HANKINS,
Executive Director.

THE OFFICE OF SALT LAKE COUNTY ATTORNEY, DOUGLAS R. SHORT, COUNTY ATTORNEY,
July 29, 1997.

Attn: John McMickle.
Re amendments to 11 U.S.C. §505 and 724(b).
Hon. CHARLES GRASSLEY,
U.S. Senator, Subcommittee on Administrative Oversight and the Courts, 308 Senate Hart Office Building, Washington, DC.

DEAR SENATOR GRASSLEY: Salt Lake County's tax revenue, including those of the several school districts located within the county, has been adversely affected by 11 U.S.C. §§724(b) and 505. Both provisions discriminate unfairly against governmental entities and take needed governmental and school revenue and shift it to other creditors of the estate.

For example, because 11 U.S.C. §505 permits the bankruptcy court to redetermine the value of property for tax purposes, Salt Lake County and schools have lost substantial tax revenue because debtors have been permitted to challenge assessments without the necessity of complying with state law.

In one chapter 11 proceeding Salt Lake County and the school districts lost $61,800 due to the provisions of 11 U.S.C. §505. In another chapter 11 proceeding the debtor attempted to obtain a refund of taxes paid three years prior to the bankruptcy filing and one post-petition year totaling approximately $80,000. The county settled after the trustee agreed to drop his pre-petition refund but lost approximately $18,000 which the Trustee would not have been entitled to under state law. Further, in 1996 the county and school districts lost another $13,500 in a chapter 7 proceeding because of section 505 jurisdiction. The above actions could not have been brought had state law applied.

Title 11, U.S.C., §724(b) is often used in this jurisdiction to take county and school district tax money and shift it to administrative expense and other priority claimants. It should be eliminated or limited to federal statutory liens. It is evident from the legislative history of §724 and its predecessors that Congress never contemplated the impacts of shifting local property tax revenue away from schools and local governments, which provide police and fire protection and other essential services to estate property, to other creditors such as chapter 11 administrative expense claimants and lienholders junior to the tax liens.

Thank you for considering the foregoing issues. Unfortunately we are not able to present this in person. However, your assistance is appreciated.

Sincerely,
MARY ELLEN SLOAN,
Deputy Salt Lake County Attorney, Civil Division.

TREASURERS' ASSOCIATION OF VIRGINIA,
July 29, 1997.

Re Investment in Education Act of 1997.
U.S. Senator CHARLES GRASSLEY,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR GRASSLEY: I am writing on behalf of the Treasurers' Association of Virginia to express our support for the Investment in Education Act of 1997. The membership of the Treasurers' Association consists of over 180 county, city and town treasurers throughout the Commonwealth of Virginia. In Virginia, the local treasurer is responsible for the receipt and collection, safekeeping and investing, accounting and disbursement of local government revenue.

Of primary importance to our members is the retention of an effective ad valorem tax lien on real property. This lien is paramount to all other debts under Virginia law. In giving this lien the ultimate priority, the Virginia legislature recognized the importance of real property taxes to Virginia localities. Real property taxes are an indispensable method of funding government functions including schools, police and fire protection, sanitation and other essential government services. Under the current bankruptcy scheme, however, this first priority lien can be negated by a bankruptcy trustee acting pursuant to §724(b).

The legislation which you have proposed would rectify this anomaly of the Bankruptcy Code. This legislation would exempt a "properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property . . ." from the scope of §724(b). This amendment is consistent with the original legislative history of this subsection, and reflects the primary importance of ad valorem taxes and tax liens in the operations of local government.

Sincerely,
KEVIN R. APPEL,
Counsel.

ADDITIONAL COSPONSORS

S. 22

At the request of Mr. MOYNIHAN, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 22, a bill to establish a bipartisan national commission to address the year 2000 computer problem.

S. 25

At the request of Mr. FEINGOLD, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 25, a bill to reform the financing of Federal elections.

S. 61

At the request of Mr. LOTT, the name of the Senator from Kansas [Mr. ROBERTS] was added as a cosponsor of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 89

At the request of Ms. SNOWE, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 89, a bill to prohibit discrimination against individuals and their family members on the basis of genetic information, or a request for genetic services.

S. 358

At the request of Mr. DEWINE, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from Louisiana [Ms. LANDRIEU] were added as a cosponsors of S. 358, a bill to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes.

S. 493

At the request of Mr. KYL, the name of the Senator from Illinois [Mr. DURBIN] was added as a cosponsor of S. 493, a bill to amend section 1029 of title 18, United States Code, with respect to cellular telephone cloning paraphernalia.

S. 507

At the request of Mr. HATCH, the name of the Senator from Georgia [Mr. CLELAND] was added as a cosponsor of S. 507, a bill to establish the United States Patent and Trademark Organization as a Government corporation, to amend the provisions of title 35, United States Code, relating to procedures for patent applications, commercial use of patents, reexamination reform, and for other purposes.

S. 623

At the request of Mr. INOUYE, the name of the Senator from New Jersey [Mr. TORRICELLI] was added as a cosponsor of S. 623, a bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs.

S. 657

At the request of Mr. DASCHLE, the name of the Senator from New Jersey [Mr. TORRICELLI] was added as a cosponsor of S. 657, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive military retired pay concurrently with veterans' disability compensation.

S. 675

At the request of Mr. MCCONNELL, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 675, a bill to amend the Internal Revenue Code of 1986 to modify the application of the passive loss limitations to equine activities.

S. 769

At the request of Mr. LAUTENBERG, the name of the Senator from Illinois [Mr. DURBIN] was added as a cosponsor of S. 769, a bill to amend the provisions of the Emergency Planning and Community Right-To-Know Act of 1986 to expand the public's right to know about toxic chemical use and release, to promote pollution prevention, and for other purposes.

S. 836

At the request of Mr. ABRAHAM, the name of the Senator from Colorado [Mr. ALLARD] was added as a cosponsor of S. 836, a bill to offer small businesses certain protections from litigation excesses.

S. 995

At the request of Mr. LAUTENBERG, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 995, a bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals.

S. 1031

At the request of Mr. GRASSLEY, the names of the Senator from Alabama

(Mr. SESSIONS) and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 1031, a bill to protect Federal law enforcement officers who intervene in certain situations to protect life or prevent bodily injury.

S. 1042

At the request of Mr. CRAIG, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1942, a bill to require country of origin labeling of perishable agricultural commodities imported into the United States and to establish penalties for violations of the labeling requirements.

S. 1059

At the request of Mr. CHAFEE, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 1059, a bill to amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

S. 1062

At the request of Mr. D'AMATO, the names of the Senator from Delaware (Mr. ROTH), the Senator from Oregon (Mr. WYDEN), and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of S. 1062, a bill to authorize the President to award a gold medal on behalf of the Congress to Ecumenical Patriarch Bartholomew in recognition of his outstanding and enduring contributions toward religious understanding and peace, and for other purposes.

S. 1113

At the request of Mr. GRASSLEY, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 1113, a bill to extend certain temporary judgeships in the Federal judiciary.

SENATE RESOLUTION 111

At the request of Mr. THURMOND, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of Senate Resolution 111, a resolution designating the week beginning September 14, 1997, as ''National Historically Black Colleges and Universities Week,'' and for other purposes.

AMENDMENT NO. 1059

At the request of Mr. FAIRCLOTH the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of amendment No. 1059 intended to be proposed to S. 1061, an original bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

AMENDMENT NO. 1069

At the request of Mr. SPECTER the names of the Senator from Alaska (Mr. STEVENS) and the Senator from Minnesota (Mr. GRAMS) were added as cosponsors of amendment No. 1069 proposed to S. 1061, an original bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

AMENDMENT NO. 1078

At the request of Mr. DURBIN the names of the Senator from California (Mrs. BOXER), the Senator from Arkansas (Mr. BUMPERS), the Senator from Ohio (Mr. DEWINE), the Senator from California (Mrs. FEINSTEIN), the Senator from New Hampshire (Mr. GREGG), the Senator from Iowa (Mr. HARKIN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Vermont (Mr. LEAHY), the Senator from Rhode Island (Mr. REED), the Senator from Maine (Ms. SNOWE), the Senator from Minnesota (Mr. WELLSTONE), and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of amendment No. 1078 intended to be proposed to S. 1061, an original bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

SENATE CONCURRENT RESOLUTION 50—CONDEMNING THE BOMBING IN JERUSALEM ON SEPTEMBER 4, 1997

Mr. HUTCHINSON submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 50

Whereas on September 4, 1997, 3 bombs exploded in Jerusalem on Ben Yehuda Street, killing at least 8 people and injuring more than 165 others.

Whereas HAMAS, a terrorist organization, has a ''military wing'' which has claimed responsibility for this cowardly act;

Whereas Yasser Arafat, Chairman of the Palestinian Authority, has made statements in which he said ''HAMAS, even its military wing is a patriotic movement.'';

Whereas on August 20, 1997, Chairman Arafat publicly embraced the leader of HAMAS, Abdel Aziz al-Rantisi;

Whereas Yasser Arafat has recently ordered the release of several HAMAS terrorists being held in Palestinian Authority jails, including Nabil Sharihi, who is suspected in a bombing that killed Alisa Flatow, an American citizen;

Whereas Israel has recently given Yasser Arafat a list of 150 suspected terrorists who are presently residing in Palestinian-controlled territory;

Whereas Yasser Arafat has made public statements in which he vowed not to ''bow down'' to Israeli requests that he arrests suspected terrorists;

Whereas since the beginning of the Oslo peace process, over 260 Israelis have been killed, and hundreds more have been injured, far more than in a similar period before the peace process began; and

Whereas in violation of the Oslo Accords, the Palestinian Authority has withheld full security cooperation with the State of Israel, which may have made this attack more likely; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) condemns in the strongest possible terms this latest bombing and those responsible for encouraging or inciting such cowardly acts;

Whereas (2) expresses its deepest condolences to the families of the victims of this latest bombing and expresses its solidarity with the people of the State of Israel in this tragic time;

(3) reaffirms that the United States should fully cooperate with the State of Israel in helping to stem the tide of terrorism, which has threatened the Oslo peace process and the stability of this vital region; and

(4) affirms that the United States should provide no monetary or other assistance to the Palestinian Authority until it has fulfilled its obligations under the Oslo Accords, including—

(A) taking affirmative steps to arrest and prosecute suspected terrorists;

(B) resuming full security and intelligence cooperation with the State of Israel;

(C) taking affirmative steps to confiscate all unlicensed weapons and explosives;

(D) publicly condemning in Arabic this most recent terrorist act and other such acts;

(E) prohibiting participation in the Palestinian security services of individuals suspected of committing terrorist acts;

(F) ceasing all anti-Israeli rhetoric, including statements which refer to terrorist groups as ''patriotic'', statements which praise terrorists or terrorist leaders, and statements encouraging a ''battle'' or ''jiha'' against Israel;

(G) cooperating with Israel in the transfer of suspected terrorists to Israel to stand trial;

(H) rescinding the proclamation that the death penalty would be imposed for the sale of land to Jews or Israelis;

(I) ceasing the use of maps depicting ''Palestine'' as encompassing the entire State of Israel;

(J) completing the process of amending the covenant of the Palestinian Liberation Organization, including the recession of those specific articles which call for armed struggle to liberate ''Palestine'' or question the legitimacy of Zionism or the State of Israel; and

(K) taking affirmative steps to reduce the size of the Palestinian police force, in accordance with the limits set forth in the Oslo and subsequent accords.

Mr. HUTCHINSON. Mr. President, I rise today, along with my friend and colleague Congressman JIM SAXTON, to submit a concurrent resolution that condemns, in the strongest possible terms, today's bombing in Jerusalem on Ben Yehuda Street.

Three bombs exploded in Jerusalem today killing at least 8 people and injuring more than 165 others. Mr. President, once again the world watches in horror as innocent citizens get blown up in a Jerusalem marketplace.

Just weeks after a tragic bombing incident in July, Yasser Arafat publicly embraced the leader of Hamas. Two weeks later, today, three more bombs kill and maim civilians on a crowded shopping street in Jerusalem.

Mr. President, I am outraged by these continued terrorist actions under the watch of the Palestinian Authority.

Mr. President, among other things, the resolution that I offer today would require Congress to:

Reaffirm that the United States should fully cooperate with the state of Israel in helping to stem the tide of terrorism, which has threatened the Oslo process and the stability of this vital region; express its deepest condolences to the families of the victims of

this latest bombing and express its solidarity with the people of the State of Israel; and affirm that the United States should provide no monetary or other assistance to the Palestinian Authority until it has fulfilled its obligations under the Oslo accords.

To many of my colleagues that may not already know this, I have just returned from Israel, where I walked up and down Ben Yehuda street. Therefore, this resolution hits close to home for me.

Mr. President, it is time for Arafat to live up to the commitments he made in the Oslo accords and break the back of the terrorist infrastructure in Palestine.

I urge my colleagues to join me in condemning today's terrorist acts and cosponsor this important legislation.

AMENDMENTS SUBMITTED

THE DEPARTMENT OF LABOR APPROPRIATIONS ACT FOR FISCAL YEAR 1998

D'AMATO (AND OTHERS) AMENDMENT NO. 1079

Mr. D'AMATO (for himself, Ms. MOSELEY-BRAUN, Mr. HARKIN, Mr. DORGAN, Mr. SPECTER, and Mr. STEVENS) proposed an amendment to the bill (S. 1061) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1998, and for other purposes; as follows:

On page 45, line 13, strike ''$854,074,000'' and insert ''$854,074,000 (and an additional amount of $40,000,000 that shall be used to carry out title III of such Act)''.

On page 85, line 19, strike ''$30,500,000'' and insert ''$70,500,000''.

LIEBERMAN (AND COATS) AMENDMENT NO. 1080

Mr. LIEBERMAN (for himself and Mr. COATS) proposed an amendment to the bill, S. 1080, supra; as follows:

On page 50, line 9, strike ''$1,271,000'' and insert ''1,256,987,000'', and on line 10, strike ''$530,000,000'' and insert ''$515,987,000''.

On page 53, line 12, strike, ''$310,000,000'' and insert ''285,000,000''.

On page 59, line 12, strike, ''362,225,000.'' and insert ''352,225,000, of which $40 million shall be made available to carry out Park A of Title X of the Elementary and Secondary Education Act of 1965.''

On page 59, line 14, after ''said Act'' insert '', $100,000,000 shall be available to carry out part C of Title X of the Elementary and Secondary Education Act of 1965,''.

NICKLES (AND JEFFORDS) AMENDMENT NO. 1081

Mr. NICKLES (for himself and Mr. JEFFORDS) proposed an amendment to the bill, S. 1061, supra; as follows:

On page 25, between lines 9 and 10, insert the following:

SEC. . (a) IN GENERAL.—Except as provided in subsection (b), none of the funds made available under this Act, or any other Act making appropriations for fiscal year 1998, may be used by the Department of Labor or the Department of Justice to conduct a rerun of a 1996 election for the office of President, General Secretary, Vice-President, or Trustee of the International Brotherhood of Teamsters.

(b) EXCEPTION.—

(1) IN GENERAL.—Upon the submission to Congress of a certification by the President of the United States that the International Brotherhood of Teamsters does not have funds sufficient to conduct a rerun of a 1996 election for the office of President, General Secretary, Vice-President, or Trustee of the International Brotherhood of Teamsters, the President of the United States may transfer funds from the Department of Justice and the Department of Labor for the conduct and oversight of such a rerun election.

(2) REQUIREMENT.—Prior to the transfer of funds under paragraph (1), the International Brotherhood of Teamsters shall agree to repay the Secretary of the Treasury for the costs incurred by the Department of Labor and the Department of Justice in connection with the conduct of an election described in paragraph (1). Such agreement shall provide that any such repayment plan be reasonable and practicable, as determined by the Attorney General and the Secretary of Treasury, and be structured in a manner that permits the International Brotherhood of Teamsters to continue to operate.

(3) REPAYMENT PLAN.—The International Brotherhood of Teamsters shall submit to the President of the United States, the Majority and Minority Leaders of the Senate, the Majority and Minority Leaders of the House of Representatives, and the Speaker of the House of Representatives, a plan for the repayment of amounts described in paragraph (2), at an interest rate equal to the Federal underpayment rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 as in effect for the calendar quarter in which the plan is submitted, prior to the expenditure of any funds under this section.

KENNEDY AMENDMENT NO. 1082

Mr. KENNEDY proposed an amendment to the amendment No. 1081 proposed by Mr. NICKLES to the bill, S. 1061, supra; as follows:

At the end thereof, insert the following:

(c) Nothing in this section shall be construed to affect the obligations of the United States under the consent decree in *United States* v. *International Brotherhood of Teamsters,* 88 Civ. 4486 (DNE) (S.D.N.Y.), or any court orders thereunder.

CRAIG (AND OTHERS) AMENDMENT NO. 1083

Mr. CRAIG (for himself, Mr. NICKLES, and Mr. JEFFORDS) proposed an amendment to amendment No. 1081 proposed by Mr. NICKLES to the bill, S. 1061, supra; as follows:

Strike all after the word section and insert the following:

(a) IN GENERAL.—Except as provided in subsection (b), none of the funds made available under this Act, or any other Act making appropriations for fiscal year 1998, may be used by the Department of Labor or the Department of Justice to conduct a rerun of a 1996 election for the office of President, General Secretary, Vice-President, or Trustee of the International Brotherhood of Teamsters.

(b) EXCEPTION.—

(1) IN GENERAL.—Upon the submission to Congress of a certification by the President of the United States that the International Brotherhood of Teamsters does not have funds sufficient to conduct a rerun of a 1996 election for the office of President, General Secretary, Vice-President, or Trustee of the International Brotherhood of Teamsters, the President of the United States may transfer funds from the Department of Justice and the Department of Labor for the conduct and oversight of such a rerun election.

(2) REQUIREMENT.—Prior to the transfer of funds under paragraph (1), the International Brotherhood of Teamsters shall agree to repay the Secretary of the Treasury for the costs incurred by the Department of Labor and the Department of Justice in connection with the conduct of an election described in paragraph (1). Such agreement shall provide that any such repayment plan be reasonable and practicable, as determined by the Attorney General and the Secretary of Treasury, and be structured in a manner that permits the International Brotherhood of Teamsters to continue to operate.

(3) REPAYMENT PLAN.—The International Brotherhood of Teamsters shall submit to the President of the United States, the Majority and Minority Leaders of the Senate, the Majority and Minority Leaders of the House of Representatives, and the Speaker of the House of Representatives, a plan for the repayment of amounts described in paragraph (2), at an interest rate equal to the Federal underpayment rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 as in effect for the calendar quarter in which the plan is submitted, prior to the expenditure of any funds under this section.

(c) This section shall take effect one day after enactment of this Act.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION AND RECREATION

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Subcommittee on National Parks, Historic Preservation and Recreation of the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, September 11, 1997 at 2:00 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to review the Commemorative Works Act and the administrative and public process involved in the site selection of the World War II Memorial and the recently announced Air Force Memorial.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on National Parks, Historic Preservation and Recreation, Committee on Energy and Natural Resources, United States Senate, 364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Jim O'Toole of the Subcommittee staff at (202) 224–5161.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, September 4, 1997, at 2 p.m. to hold a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. STEVENS. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee Special Investigation to meet on Thursday, September 4, at 10 a.m. for a hearing on campaign financing issues.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHTS AND THE COURTS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Subcommittee on Administrative Oversight and the Courts, of the Senate Committee on the Judiciary, be authorized to meet during the session of the Senate on Thursday, September 4, 1997, at 2 p.m. to hold a hearing in room 226, Senate Dirksen Building, on: ''Conserving Judicial Resources: A Review of the Judicial Allocations for the Second and Eighth Circuit Courts of Appeal.''

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

MARIE BLUM RECEIVES HONORS FROM NATIONAL INDUSTRIES FOR THE BLIND

● Mr. MCCAIN. Mr. President, with the help of a telesensory screenpower Braille display and a Braille tape on the phone, Marie Blum takes hundreds of customer reservations for Ramada Hotels each day. Blind since birth, Marie's perseverance has brought her to a successful career as a reservations agent for Hospitality Franchise Systems in Phoenix, Arizona.

''If people would just apply themselves,'' says Marie, ''they might surprise themselves at what they can really accomplish.'' This philosophy and Blum's exemplary work performance brought her recognition from National Industries for the Blind (NIB) as the 1997 Private-sector Employee of the Year.

Blum, 46, sought to reenter the work force in 1994 upon the death of her husband. Previously a homemaker, Blum needed a way to support both herself and her teenage daughter. She sought training at the work adjustment program at Arizona Industries for the Blind in Phoenix, where she assembled, collated, and packed various products. Just three months later, armed with confidence and new skills, Blum was hired by Laboratory Environmental Support, Inc. where she did production and packaging work.

A year later, Blum decided to change careers and attended a 10-week unpaid customer service training program offered by Discover Card in conjunction with the group Business Organization Office Services Training (B.O.O.S.T). Again armed with new skills, Blum used her training to land her current job at Hospitality Franchise Systems.

The Private-sector Employee of the Year award is given annually by NIB. The award recognizes outstanding individuals who receive training and work experience in an NIB associated agency and then enter careers in the private sector.

National Industries for the Blind is a not-for-profit corporation whose mission is to enhance the economic and personal indepen-dence of persons who are blind, primarily through creating, sustaining, and improving employment. There are 119 independent industries throughout the United States, including Arizona Industries for the Blind, that are associated with NIB. Industries associated with National Industries for the Blind employ people who are blind in manufacturing, office, super-visory, telecommunications, executive positions and other careers. Products and services are provided by NIB-associated agencies to the federal government under the guidelines of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c). These industries also provide vocational training to people who are blind that provides them with the necessary skills to obtain gainful employment within the private sector.●

CONGRATULATING THE SOUTH MISSION VIEJO LITTLE LEAGUE

● Mrs. BOXER. Mr. President, I rise today to congratulate the South Mission Viejo Little League team, the U.S. national champions, for their outstanding 1997 season. All Americans, and all Californians, are very proud of them.

The Little League World Series has become a national tradition. Every year, the best Little Leaguers from all over the world come to Williamsport, PA to compete in the world championship. Participants leave with lifelong memories and lasting friendships.

The journey to the Little League World Series is a rigorous one. It demands the highest levels of teamwork, talent, and perseverance. South Mission Viejo reached the World Series by winning 21 of 22 games over a 3-month stretch against the toughest competition in the United States.

Manager Jim Gattis and coaches Allen Elconin, and Ed Sorgi guided these 11- and 12-year-olds first through the Division 55 tournament in San Clemente, then through the sectional playoffs in Santa Ana, and finally through the Division 2 playoffs in La Puente to determine the southern California champions. After winning all three of these tournaments, South Mission Viejo was on their way to San Bernardino, the site of the western regional championship.

After trouncing New Mexico 11–1, South Mission Viejo went on to defeat Arizona and Oregon to reach the western regional semifinals—a rematch with Oregon. A 3-run home run in the top of the fourth inning gave South Mission Viejo a 11–1 lead, and the game ended under the league's 10-run mercy rule.

The final game, against the team from Sunnyvale, CA, was a classic pitching duel. South Mission Viejo pitching rang up 11 strike-outs while Sunnyvale countered with 7 of their own. But in the end, South Mission Viejo squeezed by with a 2–1 victory, earning them a chance to compete in the Little League World Series.

They dominated the tournament from day one, winning all three of their first-round games. In the second game, against Dyer, IN, South Mission Viejo once again displayed the depth of its pitching talent. Three teammates nearly made Little League World Series history by pitching a combined perfect game—the pitching staff missed scoring a no-hitter by a single in the last inning.

The game for the national championship was a rematch of a first-round game against Bradenton, FL. It was another typical South Mission Viejo victory, a mix of consistent hitting, solid fielding, and strong pitching. Their victory earned South Mission Viejo the right to compete in the world championships.

The final game was played before 37,000 fans and an international television audience. As most Americans know, South Mission Viejo jumped to an early lead, only to fall to a heartbreaking rally in the last inning by Guadalupe, Mexico. For only the second time in 3 months, South Mission Viejo lost a baseball game.

In defeat, as in victory, South Mission Viejo represented our Nation with honor and dignity. They played hard and they played fair, earning the respect of Americans everywhere.

But they couldn't have done it without the unflagging support and enthusiasm of their parents, their families, and the thousands of volunteers who put so much time and effort into making Little League a reality. These people are at the heart of the success of the Little League—not just in Mission Viejo but all across the nation. It is not an easy job, and too often goes unheralded. I applaud the commitment of the Mission Viejo community to their team, and I congratulate them on a job well done.

I wish every member of the South Mission Viejo team the best of luck in the coming school year, and in future seasons. Congratulations.

Mr. President, I ask that the complete roster of the U.S. National Little League Champions be printed in the record.

The roster follows:

Taylor Bennett, Mike Cusick, Adam Elconin, Gavin Fabian, Gary Gattis, Brian Kraker, Chad Lucas, Nick Moore, Andrew

Nieves, Greg Oates, Ryan O'Donovan, Adam Sorgi, Ashton White, Jim Gattis, Manager, Al Elconin, Coach, Ed Sorgi, Coach.●

CONSTABLE SARA LEE

● Mr. ABRAHAM. Mr. President, I rise today to give special thanks and appreciation for Constable Sarah Lee, who has visited us from Great Britain. Constable Lee serves as a Divisional Officer with the British Special Constables in Metro Police Area 5. As a member of the British Special Constables, I would like to honor her for the sacrifice which she, along with fellow British reserve police officers, makes for her country. On behalf of the U.S. Senate, I offer my highest appreciation for the the time and talent so generously given by both British and American police reserve officers.●

WILLIAM OSBORNE HART

● Mr. FEINGOLD. Mr. President, I want to pay tribute to a beloved figure in Wisconsin politics, William Osborne Hart, who passed away on August 22. As a longtime activist in the State's Socialist Party, Hart ran for political office 25 times, and lost 25 times. He spread his message by running for office, and understood that he didn't need to win to make a difference. He once said ''I don't buy that Vince Lombardi nonsense that winning is everything. Change is everything. Most politicians in American life who win have lost their souls.''

William Hart brought about change by challenging his opponents, and the voters, with his ideas. He was a champion of the Bill of Rights, and always remained so, refusing to compromise when it was politically unpopular. A tireless political organizer, Hart was a cornerstone of Wisconsin's Socialist Party and helped found Wisconsin's Labor and Farm Party.

A great example of Hart's tenacity was his run for the Presidency in 1984. Though he was a well-known politician in his home State, Hart was almost kept off Wisconsin's Presidential primary ballot, not considered a viable candidate because he lacked national media exposure. He refused to abide by a decision that equated the ability to buy television time with the right to run for office, and sued for a place on the ballot with the Wisconsin branch of the American Civil Liberties Union. Hart won his lawsuit and scored an important legal victory. He didn't win the primary, but he did make a difference.

''I've always said that if I won an election, the first thing I'd do is demand a recount,'' said Hart, who loved to say that he'd once come ''dangerously close'' to winning a seat on the Madison school board. In 1992, at 80 years old, Hart ran in his 25th and last election. Walking with two canes and suffering from heart problems, most people would have decided 24 times was enough. But Hart defied convention to the end, and exemplified integrity and commitment to those who knew him.

Though he felt strongly about politics, Hart never let partisanship get the better of him. His dignity, kindness and humor won him the respect and friendship of people across the political spectrum. He was also a deeply religious man who often acted as a lay preacher and was inspired by faith in everything he did.

His message has resonated with me and so many others because of its simple truth: being true to your own beliefs is the highest ideal. I have tried to heed Hart's message in my own life, and I'll always be grateful for his example of political courage.●

IN HONOR OF MELINE KASPARIAN

● Mr. KERRY. Mr. President, on Saturday, August 16th, 1997, this nation lost a leader in the fight for quality public education. The history of this country demonstrates that it is only through education that we can give the next generation the tools they need to prosper and advance, and Meline Kasparian of Massachusetts embodied this commitment every day of her professional life.

Meline spent twenty-five years in the classrooms of Springfield, Massachusetts, teaching two subjects that she loved dearly: English and theater. Her students were profoundly touched by her ability to present works from a broad spectrum of history and make them relevant and applicable to the modern age. In the course of teaching, she exposed her students to a broad variety of artists, including the works of African-American playwrights and authors such as James Baldwin and Julius Lester. This love of art, literature and history inspired her to work with the Black Repertory Theatre at the University of Massachusetts/Amherst, where her extensive contributions will be missed for years to come.

Ultimately, though, Ms. Kasparian will be remembered for her contributions to education on both the local and state level. From 1987 to 1996, Meline Kasparian devoted her time to numerous associations committed to retaining the highest educational standards in the country. Her career as a committed leader in Massachusetts began with her service as president of the Springfield Education Association in 1987 and culminated in her election as president of the Massachusetts Teachers Association, an organization 80,000 members strong, in 1996.

Ms. Kasparian's fight for quality public education made her prominent on the national stage, as well. At conferences, workshops and round-tables, she worked with politicians and education advocates from all over the country. She included in her focus numerous Democratic National Conventions, where she proudly represented the people of Massachusetts as a delegate. At these and other national conferences, Meline distinguished herself as a tireless advocate for the expansion of educational opportunities. Realizing the impact it had on educational priorities, she invested considerable time in the electoral process of her state, working on campaigns for legislators such as John Olver, and, I am proud to say, in my re-election campaign in 1996.

Ms. Kasparian's charity and service extended beyond her profession. She hosted fundraisers for international relief organizations, demonstrating her deep and unselfish commitment to improving the quality of life for others throughout the world. In and of themselves, her contributions to housing through the work of the Amherst Housing Review Board, which she helped to establish, are worthy of recognition.

It is with our knowledge of Meline Kasparian as an influential leader and a selfless and caring woman that we honor her for her efforts in educating thousands of young people across Massachusetts and attempting to bring educational opportunities to every child.●

UNANIMOUS CONSENT AGREEMENT—VITIATION OF CERTAIN NOMINATIONS

Mr. ENZI. Mr. President, as in executive session, I ask unanimous consent that the President be requested to return to the Senate the resolution of the Senate of July 24, 1997, advising and consenting to nominations in the Navy beginning John A. Achenbach, to be captain, and ending Sreten Zivovic, to be captain; further, that the confirmation of the nominations be vitiated, and when returned by the President, the nominations be returned to the Committee on Armed Services.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENZI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR FRIDAY, SEPTEMBER 5, 1997

Mr. ENZI. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9:30 a.m. on Friday, September 5. I further ask that on Friday, immediately following the prayer, the routine requests through the morning hour be granted, and the Senate immediately begin debate on the motion to proceed to S. 830, the FDA reform bill, and that the debate time be equally divided in the usual form until 9:50 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. I further ask that at 9:50 a.m. the Senate proceed to a cloture

vote on the motion to proceed to the consideration of S. 830, the FDA reform bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ENZI. For the information of all Members, tomorrow the Senate will immediately begin consideration of the motion to proceed to S. 830, the FDA reform bill, with the time from 9:30 a.m. to 9:50 a.m. being equally divided in the usual form. As previously ordered, a cloture vote on the motion to proceed to the FDA bill will occur at 9:50 a.m. Also, by previous consent, if cloture is invoked on Friday, the Senate will debate for 8 hours on the motion to proceed equally divided between Senators JEFFORDS and KENNEDY. In addition, there will be 4 hours of debate on the motion to proceed remaining on Monday. Also, by consent, a vote is expected Monday at 5 p.m. on an amendment relating to the Labor-HHS appropriations bill. Any remaining votes will be stacked to occur on Tuesday.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. ENZI. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 9:32 p.m., adjourned until Friday, September 5, 1997, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 4, 1997:

THE JUDICIARY

DALE A. KIMBALL, OF UTAH, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH VICE DAVID K. WINDER, RETIRED.

EDWARD F. SHEA, OF WASHINGTON, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON VICE ALAN A. MCDONALD, RETIRED.

DEPARTMENT OF COMMERCE

R. ROGER MAJAK, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF COMMERCE, VICE SUE E. ECKERT, RESIGNED.

RAYMOND G. KAMMER, OF MARYLAND, TO BE DIRECTOR OF THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, VICE ARATI PRABHAKAR.

PUBLIC HEALTH SERVICE

THE FOLLOWING CANDIDATES FOR PERSONNEL ACTION IN THE REGULAR COMPONENT OF THE PUBLIC HEALTH SERVICE COMMISSIONED CORPS SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW AND REGULATIONS:

1. FOR APPOINTMENT:

To be assistant surgeon

JENNIFER L. BETTS
MATTHEW A. CLARK
GRETCHEN M. ESPLUND
PHILIP T. FARABOUGH
LAURIE E. OLNES
SUSANNAH Q. OLNES
MELISSA A. SIPE
JOANETTE A. SORKIN
REBECCA J. WERNER

FOREIGN SERVICE

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED, AND ALSO FOR THE OTHER APPOINTMENTS INDICATED HEREWITH:

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS ONE, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

DOMINIC ALFRED D'ANTONIO, OF CONNECTICUT
JOSEPH J. PASTIC, OF VIRGINIA

U.S. INFORMATION AGENCY

NANCY R. LEROY, OF FLORIDA

DEPARTMENT OF STATE

DAVID F. DAVISON, OF VIRGINIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS TWO, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

EARELL EDWIN KISSINGER, III, OF COLORADO
MICHAEL JAMES YATES, OF VIRGINIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

CHARLES S. MORGAN, OF VIRGINIA
SUSAN MUTIJIMA PAGE, OF ILLINOIS

U.S. INFORMATION AGENCY

FRANK J. WHITAKER, OF VIRGINIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS FOUR, CONSULAR OFFICER AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

U.S. INFORMATION AGENCY

MARY JANE WOLANSKY BUSHNAQ, OF VIRGINIA
THOMAS E. COONEY, OF MICHIGAN
NIDA A. EMMONS, OF FLORIDA
SHEILA R. PARKMAN, OF PENNSYLVANIA
KARYN ALLISON POSNER-MULLEN, OF FLORIDA
ALETA FAY WENGER, OF WASHINGTON

DEPARTMENT OF STATE

CHRISTOPHER D. BERLEW, OF VIRGINIA
BETTY A. BERNSTEIN-ZABZA, OF THE DISTRICT OF COLUMBIA
JANINE R. BOIARSKY, OF CALIFORNIA
RUSSEL JOHN BROWN, OF MONTANA
KELLY COLLEEN DEGNAN, OF CALIFORNIA
LESLIE STEPHEN DEFRAFFENRIED, OF TEXAS
CYNTHIA RAE DOELL, OF NEBRASKA
MARK CHRISTOPHER ELLIOTT, OF MARYLAND
KAREN LYNN ENSTROM, OF PENNSYLVANIA
GABRIEL ESCOBAR, OF TEXAS
JONATHAN DAVID FRITZ, OF FLORIDA
J. ROBERT GARVERICK, OF OHIO
JOHATHAN HENICK, OF CALIFORNIA
BARBARA A.P. HIBBEN, OF MARYLAND
JAN KRC, OF THE DISTRICT OF COLUMBIA
PATRICIA J. KOETELANCIK, OF ILLINOIS
MARGARET U. KURTZ-RANDALL, OF ILLINOIS
ADAM DUANE LAMOREAUX, OF UTAH
TIMOTHY A. LENDERKING, OF NEW HAMPSHIRE
CHERYL S. LESTER, OF VIRGINIA
BRIAN R. NARANJO, OF NEW MEXICO
HELEN PATRICIA REED-ROWE, OF MARYLAND
JOAN MARIE RICHARDS, OF CALIFORNIA
ELIZABETH HELEN ROOD, OF MARYLAND
WILLIAM JOHANN AUGUST SCHMONSEES III, OF SOUTH CAROLINA
DAVID JONATHAN SCHWARTZ, OF FLORIDA
KENNETH A. THOMAS, OF OREGON

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS FOUR, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, EFFECTIVE MAY 29, 1997:

DEPARTMENT OF STATE

CHRISTINE ANNE HAROLD, OF MARYLAND

THE FOLLOWING-NAMED MEMBERS OF THE FOREIGN SERVICE OF THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF STATE AND THE U.S. INFORMATION AGENCY TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICES OF THE UNITED STATES OF AMERICA, AS INDICATED:

CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

ABIGAIL KESSLER ARONSON, OF NEW JERSEY
MARK ANDREW ASSUR, OF VIRGINIA
BRIAN S. AUSTIN, OF VIRGINIA
MARTHA L. AUSTIN, OF VIRGINIA
ALAN M. BROWNING, OF VIRGINIA
RICHARD C. BULMAN, JR., OF FLORIDA
DON L. BROWN, OF TEXAS
ELAINE A. BYERS, OF VIRGINIA
PETER CALLAMARI, OF VIRGINIA
JOHN M. CARDWELL, OF VIRGINIA
FLORENCE CARSON, OF VIRGINIA
MARC WALTER CARSON, OF VIRGINIA
CHERYL D. COMFORT-CARTER, OF VIRGINIA
ERIN CROWE, OF MICHIGAN
LINDA ELISA DAETWYLER, OF CALIFORNIA
GARY A. DZIEDZIC, OF VIRGINIA
CHERYL L. EICHORN, OF VIRGINIA
ALBERT ELGAMIL, OF VIRGINIA
JOSE M. ESTEVEZ, OF PUERTO RICO
RANDOLPH FRANCIS FAGAN, JR., OF VIRGINIA
ROBERT L. FARRIS, OF VIRGINIA
DAVID ERIC FASS, OF VIRGINIA
JOHN EDWARD FRIBERG, JR., OF VIRGINIA
DANIEL T. FROATS, OF CALIFORNIA
STEPHEN C. GALLOWAY, OF VIRGINIA
RUSSELL C. GILGER, OF VIRGINIA
TERRY ARTHUR GINSBURG, OF VIRGINIA
JOSHUA D. GLAZEROFF, OF NEW YORK
CAREN F. GORDON, OF VIRGINIA
CHRISTOPHER J. GREEN, OF VIRGINIA
GISELLE C. GRIGGS, OF MARYLAND
GEORGE K. HALE, OF WASHINGTON
SABINA ANN HASMI, OF VIRGINIA
JAMES W. HENTSCHEL, OF VIRGINIA
DAVID ALAN HIGDON, OF TEXAS
JOHN J. HILL, OF ALABAMA
MICHELLE M. HOPKINS, OF CALIFORNIA
JAMES C. HSU, OF TEXAS
ANTHONY N. IERONIMO, OR NEW JERSEY
S. GEORGE IMREDY, OF THE DISTRICT OF COLUMBIA
CHRISTOPHER LEE JAEGER, OF MARYLAND
THOMAS T. KIM, OF VIRGINIA
DOUGLAS ALAN KRIESEL, OF THE DISTRICT OF COLUMBIA
SANJAI KUMAR, OF VIRGINIA
JULIE LANGE, OF VIRGINIA
BETTY JO LITTLE, OF THE DISTRICT OF COLUMBIA
LIZABETH LOWELL, OF FLORIDA
KATHLEEN A. LUNDY, OF VIRGINIA
GEORGE W. LYNN, OF VIRGINIA
JOSE ELIAS MERRERO, OF FLORIDA
JACQUES L. MASSENGILL, OF VIRGINIA
ROBERT PETER MCCARTHY, OF NEW YORK
JOHN M. MCCASLIN, OF OHIO
FRANCIS M. MCGUINNESS, OF VIRGINIA
MITZI M. MCNAMARA, OF VIRGINIA
THERESA M. MICHAUD, OF VIRGINIA
WILLIAM L. MOYER, OF VIRGINIA
BARBARA BETH MORRISON, OF NEW JERSEY
SUSAN V. NARAINE, OF THE DISTRICT OF COLUMBIA
MARTIN A. NEWELL, OF MARYLAND
DAVID ROY O'CONNOR, OF THE DISTRICT OF COLUMBIA
DARIN K. OLSON, OF VIRGINIA
MICHAEL ANDREW ORDONEZ, OF WASHINGTON
DOUGLAS L. PADGET, OF VIRGINIA
KENNETH L. PARSON, OF VIRGINIA
REBECCA ANN PASINE, OF INDIANA
TROY ERIC PEDERSON, OF VIRGINIA
ROSETTA PERRI, OF PENNSYLVANIA
J. PHILIP PLOWMAN, OF VIRGINIA
DAVID B. PONSAR, OF CALIFORNIA
JOHN DAVID RADEL, OF VIRGINIA
HOPE C. RAWDING, OF VIRGINIA
SCOTT MICHAEL RENNER, OF COLORADO
DEBORAH CARRIE RHEA, OF VIRGINIA
NICHOLAS E. REYNOLDS, OF VIRGINIA
JOHN P. RICHARDSON, OF VIRGINIA
JOHN C. ROBERTS, OF MISSISSIPPI
ABIGAIL ELIZABETH RUPP, OF VIRGINIA
CYNTHIA M. SADDY, OF VIRGINIA
LUIS A. SANTOS, OF MARYLAND
AMY WING SCHEDLBAUER, OF TEXAS
MICHAEL B. SCHNEIDER, OF VIRGINIA
BRIAN G. SCOTT, OF VIRGINIA
JAMES SEMIVAN, OF VIRGINIA
JANET E. SENG, OF PENNSYLVANIA
KATHLEEN F. SEROSKIE, OF VIRGINIA
SCOTT A. SHAW, OF ILLINOIS
RITA M. SHEEHAN, OF VIRGINIA
VINCENT P. SHUGRUE, OF VIRGINIA
DAVID J. SMITH, OF MARYLAND
LYN R. SUMNER, OF VIRGINIA
GAVIN ALEXANDER SUNDWALL, OF NORTH CAROLINA
ANDREW J. TICHAVA, OF VIRGINIA
NANCY E. TOTTEN, OF VIRGINIA
WILLIAM M. TOTTEN, OF VIRGINIA
DEE B. WHITE, OF VIRGINIA
TERESA WILKIN, OF THE DISTRICT OF COLUMBIA
SEAN MICHAEL WISWESSER, OF VIRGINIA
CHARLES M. WOLF, JR., OF VIRGINIA
KRISTIN MARIE WOOD, OF VIRGINIA
DAVID MICHAEL ZIMOV, OF OHIO

CONFIRMATIONS

Executive nominations confirmed by the Senate September 4, 1997:

THE JUDICIARY

HENRY HAROLD KENNEDY, JR., OF THE DISTRICT OF COLUMBIA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA.

FRANK M. HULL, OF GEORGIA, TO BE U.S. CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT.